IMT Nuremberg Archives

H – 183

International Court of Justice

H0183-0002

OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY ON 18 JULY 1946, 1000-1700, LORD JUSTICE LAWRENCE PRESIDING.

THE MARSHAL: May it please the Tribunal, the defendants Hess, von Ribbentrop and Fritsche are absent.

DR. SAUTER(Counsel for the defendant von Schirach): Gentlemen of the Tribunal, yesterday at the end of my statement I dealt with the accusation of the Prosecution that the defendant von Schirach had trained and educated the youth of the Third Reich in a military sense, that he had prepared them for the waging of aggressive wars and had participated in a conspiracy against the peace. Now I continue on page 15 of my brief, and I turn to a further accusation which has been made by the Prosecution against Defendant von Schirach.

Since the Prosecution could not prove to defendant von Schirach that he over served Hitler's war policy before the war, he is now charged with having had various relations with the SS and SA and especially to have drawn his young recruits from the Hitler Youth as well as the SS and SA, as also the Leader Corps of the Party. This last fact is correct but proves nothin as to Schirach's attitude towards Hitler's war policy and is equally point-less as regards the question of hi participation in a war conspiracy of Hitler's. For if 90 to 95 % or more of German youth belonged to the Hitler Youth, then it was only natural that the Party as well as its formations should draw their young recruits from year to year and to a growing extent from the Hitler Youth. Practically no other youth was available.

If the Prosecution, however, refers to the agreement between the Youth Leadership and the Reichsfuehrung SS dated Oct. 1938 concerning patrol service for the Hitler Youth which has been submitted as Document 2396-PS it cannot, by any means, draw any inference therefrom, for patrol service in the Hitler Youth was only an institution designed to control and supervis the discipline of the Hitler Youth members when they made a public appearanc

H0183 - 0003

this was therefore a kind of corporative police operation carried out by the Hitler Youth against their own members and against them alone. In order, however to guard against difficulties with the general police, an arrangement by agreement with the Reichsfuehrer SS Himmler was necessary because the latter was the Chief of the whole police organization in Germany and could have made difficulties for the institution of the patrol service of the HJ.

This was the only object of the agreement of October 1936, which in reality had just as little to do with providing new blood for the SS, as with the conduct of and the preparation for war. Moreover, it can clearly be seen how much Schirach resisted any influence the Party might win over the Hitler youth from the fact that in 1938 he protested very sharply against having the education of the Hitler Youth during the last two years, namely from 16 to 18 years, taken over by the SA; he sharply rejected this plan and through a personal visit to Hitler succeeded in having the Fuehrer order in question not carried out in practice.

As for his attitude toward the SS, we know from the testimony of the witness Gustav Hoepken who was heard here on the 28th of May 1946, and from the affidavit of the witness Maria Hoepken, Schirach Document Book no, 3 that Schirach always feared he was being shadowed and spied upon by the SS in Vienna. He always had an uncomfortable feeling because at the beginning of his activity in Vienna there had been appointed for him for the business of Reichsstatthalter and Reich Defence Commissioner, a permanent representative in the person, of all things, of a higher SS leader Dr. Delorueggе, who, as Schirach knew, had direct connections with the Reich leader SS. The same man, as has been proved, proposed to Hitler in 1943 to have Schirach imprisoned for defeatism and to have him placed before the people's court, which meant in practice that by Himmler's urging, Schirach would be hanged. These facts alone already prove what was the real relation between defendant von Schirach and the SS and it is then comprehensible why Schirach finally refused even the so-called protection by the police force appointed to him and preferred to transfer his personal protection to a unit of the Wehrmacht which was not subordinate to the order of Himmler. (Compare Affidavit Maria Hoepken figure 5 in v. Schirach Document Book No. 3).

H0183 - 0004

Another accusation has been made against defendant von Schirach and which is included in the indictment concerns his attitude toward the Church question . This issue is, in fact, given a minor part in the Indictment, but turns out nevertheless to be of considerable importance for the judgement of Schirach's human personality.

Schirach himself, as well as his wife, always remained in the bosom of the Church. To the foreign critic this circumstance may perhaps appear an unimportant detail, but we Germans know the amount of pressure exercised upon ranking Party officials precisely in such matters and how few, in his position, ventured to resist such pressure. Schirach was one of those few. He was that high-ranking Party Leader who constantly and invariably stepped in with extreme severity when he learnt of hostile interference and outrages against the Church on the part of the Hitler Youth. He has, indeed, been reproached of the fact that various songs were sung by the Hitler Youth, which contained outrageous remarks about religious institutions, but in this respect Schirach could with a good conscience confirm on his oath to the effect thathe was to a certain extent unaware of those songs, which is entirely conceivable where an organization of 7 or 8 million members is involved, and, moreover that certain songs now considered objectionable, date back to the Middle Ages and have figured in the Song-book of the "Wandervogel", a former Youth organization which the Prosecution surely does not propose to condemn. Schirach has, however, especially pointed out that in the years 1933 to 1936, several million youths from an entirely different spiritual environment joined the Hitler Youth and that in the first revolutionary years, that is, in the period of storm and stress of the movement, it was quite impossible to hear of and prevent outrages of this short.

Whenever Schirach heard of such things he intervened and repressed abuses of this kind, which naturally represented only excesses onthe part of isolated elements and could not commit the Youth organization as a whole.

It is Schirach's conviction that the examination of evidence leaves no doubt as to his concilatory behavious in the matter of the Church, and to the fact that he strove to establish a proper relation of mutual respect between the Church on the one hand and the Third Reich, and more especially the

H0183-0005

Reich Youth Leadership, on the other hand, and to observe their respective rights and competence. At his own request, Schirach was invested by the Reich Minister of the Interior with the direction of the Concordat negotiations with the Catholic Church in 1934, because he hoped, by his personal cooperation, to achieve an agreement with theCatholic Church more easily. He has honorably endeavoured to find, for the settlement of the Youth question, a formula upon which unanimity with the Catholic Church could be possible. His moderation and good will in this respedt were then indeed frankly acknowledged by the representatives of the Catholic Church. But it was all ultimately frustrated by Hitler's opposition and the complications created, particularly for these negotiations, by the events brought about on the June 30 1934 by the so-called Roehm Putsch.

With the Protestant Church on the other hand, Schirach achieved an agreement with the Reich Bishop Dr. Meuller, so that the incorporation of the Protestant Youth Asscciations in the Hitl er Youth was not achieved by constraint but by mutual agreement, and therefore not by the breaking up of those associations by the State or Party as the Prosecution assumes, but upon the intiative of the ecclesiastical head andin complete agreement with him.

It must be pointed out here that it was always Schirach's policy that on the part of the youth leadership neither then nor later restrictions were imposed on church services for youth. On the contrary, as he himself has testified and as was confirmed by the witness Lauterbacher, Schirach emphatically stated in 1937 that he would leave it to thechurches to educate the Youth according to the spirit of their faith and at the same time he ordered that, as a principle, no Hitler Youth duty was to be arranged on Sundays during the time of church services. If, however, in individual cases such interferences occurred anyhow and, as it was proven in the cross-examination, religious authorities made complaints about this, then the defendant Schirach can not be blamed for this nor does it alter the good intentions which he had.

Not a single case could be proven when he incited against the church or had made anti-religious statements; on the contrary; at numerous rallies, contained in the von Schirach document book which has been presented to the Tribunal, he not only repeatedly objected the accusation that the Hitler

H0183 - 0006

Youth were enemies of the church or atheists, but he positively always inculcated the leaders andmembers of the Hitler Youth with the obligation to fulfill their obligation toward God; he would not tolerate anyone in the Hitler Youth who did not believe in God; every true educator, would have to be at the same time an educator for religious feeling, it being thebasis of all education activities; Hitler Youth duties and religious convictions could very well be associated with each other and exist side by side. The Hitler Youth leader was to bring no conflicts of conscience whatsoever to his adherents. Leave from duty was to be granted to Hitler Youth members for religious services, rites and such. That wasvon Schirach's point of view.

Whoever gives such instructions to his deputy and repeats them over again, can claim that he will not be judged as an enemy of the church and as an enemy of religious life. By the way, it is interesting in this connection, what such a reliable judge as Neville Hendersun, wrote in his oft-quoted book "Failure of a Mission" about a speech which he heard from thelips of Schirach at the 1937 Reich Party Rally and parts of which have been submitted in Schirach's document book:

Henderson, who as ambassador in Berlin, knew intimately the German conditions evidently expected that Baldur v. Schirach would speak against the church at the Reich Party Rally and would influence the youth in the spirit of enmity to the church, as wasoften heard from theother leaders of the Party. Henderson writes and I quote two sentences: "On this day it was Schirach's speech which impressed me most, although it was quite short. A part of this speech surprised me, when he, addressing himself to the youth said: 'I do not know whether you are Protestants or Catholics, but I do know that you believe in God.'".

And Henderson added: "Formerly I had the impression that all connections with religion were abolished with in the Hitler Youth, but these expositions by Schirach appear to refute my assumption."

How Schirach really did think with regard to religion and in what sense he influenced the youth, is proved not only by his declaration of opinion which he expressed incidentally once in his speech to theteachers of the

H0183-0007

Adolf-Hitler Schools at Ordensburg Sonthofen, that Christ was the greatest leading personality of the world, but also similarly the small book submitted to you in evidence, entitled, "Christmas Gift of War Welfare Service". This book, which was sent to thefront in large editions, was dedicated by Schirach to the front soldiers who came forth from the Hitler Youth in 1944, thus at a time when radicalism in all districts of Germany could not be carried any further.

H0183-0008

Here also Schirach was an exception: you will find no swastika, no picture of Hitler, nor an SA song in the book of Reich Leader von Schirach but among other things an avowed Christian poem from Schirach's own pen, next a picture of a Madonna, beside it a reproduction of van Gogh who, as is generally known, was strictly prescribed in the Third Reich. Instead of inflammatory words, we find an exhortation to a Christian way of thinking and a copy of the "Wessobrunner Gebet", the most remarkable prayer in the German language, as everyone knows.

Bormann was enraged when he saw the little book, but Schirach remained firm and refused to withdraw the little book or alter it in any way.

The defendant von Schirach has now been charged with having once undertaken a hostile action against the Church and with having thereby taken part in the persecution of the Church. From a letter of Minister Lammers of 14 March 1941, Document R 146, it appears that Schirach proposed to keep confiscated property at the disposal of the districts, the Gau, and not to hand it over to the Reich. This case alone is no justification at all for connecting the defendant von Schirach in some way or other with the persecution of the Church. The case mentioned by the Prosecution does not concern Church property at all, but confiscated property of a Prince Schwarzenberg in his Vienna palace. This affair therefore had nothing to do with the Church. This is also confirmed unequivocally by Minister Lammer's letter of 14 March 1941, Document R 146, which mentions only a "confiscation of property hostile to the people and the State", whereas Bormann's far reaching personal intention becomes apparent and betrays its hostile tendency towards the Church, when Bormann speaks about "Church properties, (Monasterial possessions ans so forth)" in his accompanying letter of 20 March 1941, referring to this case. Moreover, the confiscation of Prince Schwarzenberg's property has not been caused, pronounced nor carried out by Schirach. Schirac had nothing to do with the confiscation as such; Schirach, however, agreeing with the other Gauleiters of the Austrian NSDAP and at their request, personally then applied to Hitler and requested that such confiscated property should not be taken to the Reich and not be used on behalf of the Reich, but that it should remain in Vienna. This proposal was crowned with success.

H0183-0009

Hitler complied with his request, the result being that, when the confiscation was rescinded later on, the property could be returned to its legitimate owner whereas it would otherwise have been lost to him.

By acting thus, Schirach no doubt rendered a service to the Vienna Gau and to that person who was the owner of the seized property. This case therefore cannot be charged to the defendant von Schirach; on the contrary, it speaks in his favour just as in the other case where, whilst circumventing Bormann, he intervened on behalf of Austrian nuns and as a result obtained that the whole project of confiscating Church and Monastery property was discontinued in one day in the whole of the Reich by a direct order of Hitler.

If, however, the Prosecution intends to reproach the defendant with the fact that the Vienna Authorities, subordinate to him, intended to put an Adolf Hitler School into the Monastery of Neuburg in 1941, it must on the other hand be pointed out that, even prior to the requisitioning of this monastery, entirely independent of Schirach, the Vienna Police and several Vienna Courts had established the occurrence of considerable criminal offences in this monastery; furthermore that the confiscation of part of the monastery seemed entirely justified to the defendant Schirach, as the very spacious rooms of this religious establishment were not required for monastery purposes.

It must finally be pointed out that the monastery, as can be seen from document submitted, did not complain to the Reich Minister of the Interior, of the decision to confiscate and therefore recognized the confiscation as just, although it had been expressly informed in the confiscation decree of the possibility of lodging a complaint.

Moreover, the confiscated rooms were afterwards not used for the establishment of an Adolf Hitler school, but for the purpose of the Museum of Historical Art, thus for no Party establishment, which again testifies to the fact that the Confiscation Decree had in no way been rescinded through Schirach's hostile attitude towards the Church. Had it been of importance to Schirach to injure the monastery because it was an Ecclesiastical Institution, he would also have confiscated the rooms used for religious ceremonies. He, however, strictly forbade their confiscation.

H0183-0010

After all, when appreciating this case, attention should be paid to the fact that the justification of the Confiscation Decree of 22 February 1941 had one remarkable reservation. The decree restricts itself to justifying the confiscation by the fact that on the one hand Vienna badly needed rooms and on the other the confiscated rooms were superfluous for the purposes of the monastery. Not a single word mentions or even suggests that criminal offences had been established in the monastery, as mentioned in a Police report of 23 January 1941. If this confiscation had been the result of a hostile attitude of Schirach to the Church, we could have been sure that somehow or other reference would have been made to these offences for justification of the confiscation by the Prosecution.

At Schirach's instigation, a monthly rent was paid for it to the clergy who had occupied some of the confiscated rooms, for which rent there existed no political obligation whatever.

Defendant von Schirach's further behavior does not reveal at all a hostile attitude towards the Church, particularly, if one considers, whilst appreciating this behavior, that during these years a Reich Leader was also under strong pressure by the Reich Chancellery and by Bormann and that a considerable amount of courage was necessary to resist this pressure and carry on a policy in opposition to the official Berlin policy.

The witness Wieshofer of Vienna who had the opportunity of watching Schirach's activities, confirmed that Schirach in Vienna also strove to establish correct relations with the Church, that he was always willing to listen to Cardinal Innitzer's complaints, and took severe measures against the excesses of individual members of the Hitler Youth or Hitler Youth Leader. In Vienna, he thus carried out a policy towards the Church quite different from that which his predecessor had favored, and it is beyond doubt that the Ecclesiastical circles in Vienna and the whole of the Viennese population appreciated Schirach's attitude towards the Church. This is also confirmed by the witness Gustav Hoepken who, by order of Schirach, held regular conferences with a Vienna theologian, Dekan Prof. Ens, to be able to inform the defendant Schirach of the clerical wishes and the differences which had arisen with Ecclesiastical authorities. Schirach could not do anything more in the prevailing political circumstances, as they are described in the

H0183-0011

Affidavit of Maria Hoepken, Document Book von Schirach No. 3, Figures 5, 10 and 11, if he did not wish to expose himself to the most serious danger.

The prosecution has connected the defendant with concentration camps, not in the bill of indictment but during the presentation of evidence, and the witness Alois Hoellriegel, who was questioned here was asked in the witness box, whether Schirach had ever been in Mauthausen concentration camp. To this I should like to remark that the defendant Schirach mentioned his visit to Mauthausen in his own examination by the American Prosecution before the beginning of the trial; it would, therefore, not have been necessary to have this visit testified to again by the witness Hoellriegel.

He visited the Mauthausen concentration camp in the year 1942 not in 1944, as the witness Marsalek erroneously stated; the exact year 1942 has been confirmed by the witness Hoellriegel, and in the same way also by the witness Hoepken and Wieshofer, from whom we heard that neither after 1942 nor at any other time did Schirach visit concentration camps. The visit to Mauthausen in 1942 cannot charge the defendant Schirach in this sense with having known, approved and supported all the conditions and atrocities in concentration camps.

In 1942 he saw nothing inMauthausen which might have indicated such crimes. There still were no gas ovens and such at Mauthausen in 1942. At that time mass executions did not take place at Mauthausen. The statements of the defendant von Schirach concerning his impression of this camp appear to be plausible, on the whole, because through the testimony of numerous witnesses, who have been heard during the course of this trial, it has been confirmed again and again that on the occasion of such official visits, which had been announced previously everything was carefully prepared in order to show to the visitors only that which did not fear the light of day. Mistreatments and tortures were concealed during such official visits in the same manner as arbitrary executions or cruel experiments. This was the case at Mauthausen in 1942 and also at Dachau in 1935, where Schirach and the other visitors were shown only orderly conditions, conditions which at a superficial glance appeared to be almost better than in some ordinary prisons.

H0183-0012

As a result, Schirach only knew that since 1933 there were several concentration camps in Germany in which, in his opinion, incorrigible habitual criminals and political prisoners were confined. However even today, Schirach still cannot believe that the mere knowledge of the existence of concentration camps in itself is a punishable crime, since he at no time had done anything whatsoever to promote concentration camps, never has expressed his approval of this arrangement, never has sent anybody to a concentration camp, and since he also would never have been able to make any changes in this institution or to prevent the existence of concentration camps.

Schirach's influence was always too small for that. To begin with, as Reich Youth Leader he of course had nothing to do with concentration camps, and it was lucky for Schirach that in his entire Vienna district there was not a single concentration camp.

H0183 - 0013

His entire relations with concentration camps were therefore limited, to attempt again and again to have people released from the concentration camps, and it is significant, after all, that he used his presence in the concentration camp Mauthausen - the one and only time he was there - to use his influence for Viennese citizens who were imprisoned in Mauthausen, to obtain their release.

I do not want to go any more into many details which have played a larger or smaller part in the presentation of evidence of the case Schirach. In the interest of saving time I shall not deal more specifically with the alleged connection of Schirach with Rosenberg or Streicher, nor into his alleged collaboration with the program for slave workers, about which not even the slightest cooperation of the defendant could be proven, nor into a telephone conversation which allegedly had been made by one of the Viennese officials with a SS - Colonel (SS-Standartenfuehrer) about the compulsory work of the Jews, which has been used by the Prosecution.

But I should like to make a short remark about one subject which, particularly in connection with the case of Rosenberg was dealt with. That is, a short explanation concerning the action by which thousands of youngsters in the eastern combat zone were collected and brought partly to Poland and partly to Germany.

That action had as its aim, as far as von Schirach could see from the documents presented here, apparently to bring the youngsters who had been in a zone of operation, that is, immediately behind the front, and wandering around without homes, to bring them together, to lead them into professional training and into professions so that they should be saved from physical and moral neglect. The defendant von Schirach doubts whether that could be viewed as a crime against humanity or as a war crime.

But is is certain that of that affair the defendant von Schirach did not know anything at the time. He was not competent for it at the time. That entire affair was handled by the army group center, together with theMinistry for theEastern Territories, and it is quite credible that the Eastern Ministry, as well as the army group center, did not approach the Gauleiter of Vienna in order to get his approval of that action, or even to notify him about it.

H0183-0014

The only thing which, a considerable time later, came to the knowledge of the defendant von Schirach, and which possibly has any connection with that action, was an occasional information by the Reich Youth Leader Axmann that so and so many thousand youngsters were brought to the Junkers works at Dessau as apprentices.

The defendant von Schirach stressed the importance of clearing up this matter, because he had been Reich Youth Leader before, and he wants to make it quite clear that also after leaving that office, of course he would not have done anything against the interests of the Youth.

May I add another remark here concerning the letter with the defendant von Schirach, at the time after the assassination of Heydrich, sent to Reichsleiter Bormann, and in which he has suggested to Bormann reprisal measures in the form of terror attacks against English centers of culture. That letter was actually sent by the defendant to Bormann. He stands for it. I have to point out at the very beginning that fortunately the suggestion remained a suggestion, and it was never carried out.

The defendant, however, has told us that at that time he had been strongly under theimpression of the assassination then brought against Heydrich, and it had been clear to him that a revolt of the population in Germany would necessarily lead to a catastrophe for the German armies in Russia, and in his capacity as Gauleiter of Vienna he had considered it his duty to undertake something to protect the rear of the German army fighting in Russia. And that explains that letter to Bormann, that teletype to Bormann ofthe year 1942, Document 3877, which, as I have already pointed out, fortunately remained unsuccessful.

May I then, Gentlement of the Tribunal, continue on the middle of page 26. I shall not deal in detail with the Adolf Hitler Schools which were founded by Schirach, nor into the fifth column which somehow was connected with the Hitler Youth, about which nothing definite could be charged to the defendant. I shall no longer dwell either on the repeated attempts of the defendant Schirach and his friend Dr. Colin Ross for peace, and neithe, shall I discuss the merits of the defendant concerning the evacuation of children to the rural areas, which took millions of children from bomb-endangered districts during the war into more quiet zones and which thus saved

H0183-0015

their lives and health.

The defendant von Schirach has already talked about all these affairs in details himself, and should therefore like to refer to his own statements. As counsel for the defendant von Schirach, I shall discuss only onemore problem here, namely Schirach's positi n and attitude concerning the Jewish question.

Schirach has admitted here on the witness stand that he has been a convinced National Socialist and thus also an anti-Semite from his earliest y uth. He has also made clear to us what he understood by anti-semitism during these years; He thought of the exclusion of the Jews from civil service and of thelimitation of Jewish influence in cultural life and perhaps also in economic life, up to a certain extent, But that was all which in his opinion could be undertaken against the Jews, and this was in accordance with the sug estion which he had already made as leader of the student's organization for the introduction of a quota in various class s. The defendant's decree concerning the treatment of Jewish youth is, for example, also important for his attitude (Document book Schirach No. 136) a decree in which he expressly orders that theJewish youth organizations should have the right and the possibility to practice freely within their framework; they were not to be disturbed in their own life. "In theyouth (it says there) the Jewish community shall already today take that secluded and in itself unrestrained special position which at some time the entire Jewish community will receive in the German State and in the German econony." Obviously Schirach was not at all thinking about pograms, not about bloody persecution of Jews and such he rather believed at that time that the anti-semitic movement has already reached its aim by the anti-Jewish legislative measures of theyears 1933/34; with this he believed the Jewish influence to be removed; as far as it seemed unhealthy to him. He was therefore surprised and seriously perplexed when the Nuernberg Laws were issued in 1935 which expressed a completeexclusion of the Jewish population and carried it out with barbaric severity. Schirach has in no way taken part in the plannin of these laws; he has nothing whatsoever to do with their content and their formulation. That has been proved here.

When he heard on 10 November 1938 about the pogrom against the Jews and about the brutal excesses which were staged by Goebbels and his fanatic cliqu

H0183-0016

his indignation became known throughout the entire youth (compare page 10,14? We have heard from the witness Lauterbacher (page 10,302), how Schirach reacted to the report of these excesses : he immediately called his assistants together and gave them the strictest orders that the Hitler Youth had to be kept out of such actions under all circumstances. In this sense he also had the officers of the Hitler Youth in all German cities notified by telephone, and he warned every non-commissioned officer that he would hold him personally responsible, if any excesses should occur in the Hitler Youth.

But even after November 1938, Schirach never thought of the possibility that Hitler was thinking about the extermination of the Jews. He rather only heard about it that the Jews should be evacuated from Germany into other states, that they should be transported to Poland, and that they should be settled there at worst in ghettos, but probably in a closed settlement area. When Schirach received in July 1940 Hitler's order to take over the Gau Vienna, Hitler himself also talked to him along the same lines, namely that he would have the Jews brought from Vienna into the General Government: and even today Schirach has no doubt that Hitler himself was not thinking about the so-called "final solution" of the Jewish question at that time (1940). That is the extermination of the Jews. We learn from the Hossbach minutes and other evidence of these trials that Hitler was planning the evacuation to Poland already in 1937, but that he decided on the extermination of the Jewish people only in the year 1941 or 1942.

Schirach had nothing to do at all with the evacuation of the Jews from Vienna; the execution of this measure was exclusively in the hands of the Reich Security Main Office (RSHA) and the Vienna office of this agency, and it is known that the Vienna SS Gruppenfuehrer Dr. Brunner has in the meantime been sentenced to death because of it. The only report which Schirach received and carried out concerning the Viennese Jews, was to report to Hitler in 1940, how many Jews there were still left in Vienna, and he gave this report in a letter of December 1940 where he gave the figure of the Viennese Jews for 1940 as 60,000. As it is known, Minister Lammers answered this letter by the defendant Schirach with a letter, dated 3 December 1940 (PS 1950), which shows with all clarity that it was not Schirach who

H0183-0017

ardered the evacuation of the Viennese Jews into the General Government, b Hitler himself, and that it was not Schirach, either, who carried out this measure, but the Reichsfuehrer SS Himmler who delegated his Vienna office with this task. It therefore has to be stated here categorically that Schirach is in no way responsible for the deportation of the Jews from Vienna; he did not execute this action and he did not start it; when he came to Vienna in the summer of 1940 as Gauleiter, the large part of the Viennese Jews had already voluntarily emigrated or had been forcibly evacted from Vienna, a fact which was also confirmed by the defendant Seyss-Inquart. The remaining 60,000 Jews who were still there at the beginning of Schirach's time in Vienna were deported from there by the SS. without his participation and without his responsibility. In spite of it, Schira held the well-known Viennese speech of September 1942 (No. 3046 PS) in wh he stated that every Jew working in Europe was a danger for Europpean cult Schirach furthermore said in this speech : If one wanted to make reproac to him now that he had deported 10,000 and more Jews into the Eastern ghetto fr m this city which had once been the metropolis of Judaism, then he had to answer :"He considers that as an active contribution to Europea culture". Schirach has openly and couragiously admitted that he actually expressed himself in this sense at that time, and he has stated here remo sely :"I cannot take back this wicked word, I must take the responsibili for it. I spoke these words which I sincerely regret.

Should the Tribunal see in these words a legally punishable crime agains humanity, Schirach must make atonement for this single anti-semitic rem which could be proved against him, though they merely remained words and not result in any harmful aftermath. Schirach's attitude here does not exempt the Tribunal from its duty to verify carefully what Schirach has really done, further more under what circumstances he made this remark, and finally whether Schirach had also made any other spiteful remarks against the Jews, or committed any malicious actions against Jewry as a whole.

The foremost question is : what has Schirach really done ? The re to it as arising from the results of these proceedings can only be :

H0183-0018

apart from the fact that he made some isolated anti-semitic remarks in September 1942, he has not committed any crime against the Jews. He had no competence in the question of the deportation of the Vienna Jews, he did not participate in it at all, and having too little power he could not prevent them altogether. It is just as the prosecution incidentally stated He boastfully attributed to himself an action which in reality he had never committed, and in view of his entire attitude could never have done.

What, however prompted Schirach to make this remark ? How did he come to attribute an incident to himself an incriminate himself for an activity which he had never committed ? The answer is given by the results of the evidence : it demonstrates how very difficult a position Schirach had in Vienna without giving any reason, Hitler dismissed him as Reich Youth Leader presumably because he no longer tursted him. From one year to another Hitler's fear was growing that the more youth stood behind Schirach the more they would be alienated from him (Hitler) the more the black wall of his SS was separating him from his people.

Hitler possibly saw in his Youth Leader the personification of thecoming generation who thought in worldwide terms, whose feelings were humane and who felt themselves more and more bound to those perceptions of true morality which Hitler had long ago thrown overboard for himself and his leadership of the nation because they were no longer concepts of true morality for him, but mere slogans of a meaningless propaganda. This feeling might have been a deeper reason for Hitler to dismiss Schirach as Youth Leader suddenly in the summer of 1940, without any word of explanation, and send him to Vienna as Gauleiter, a most difficult position in the city he (Hitler) hated from the bottom of his heart, even whilst he spoke of his "Austria Fatherlan

In Vienna Schirach's position was extremely complicated. Wherever he went he was shadowed and spied upon, his administrative acyivity there was sharply criticised, he was reproached for not looking after the interests of the Party in Vienna for hardly ever assisting at Party meetings and for not making any public speech. I refer for that to the Affidavit Maria Hoepken, Document Book Schirach No. 3, figures 9-11). The Berlin Party Chancellery received any complaints the Vienna Party members made about their new Gauleiter with satisfaction and this fact alone might explain the unfortunate spee

H0183-0019

Schirach made in September 1942 which was diametrically opposed to the attitude he had always maintained als concerning the Jewish question. After the interrogation of the witness Gustav Hoepken here in th s court room, there can be no doubt as to how the Vienna Speech had come about, for it indicates that Schirach had then expressly commissioned his press agent Guenther Kaufm to emphasize this particular point when telephoning his report of the Vienna speech to the German News Agnecy, "because he had to make a concession to Bormann in this respect.", a point stressed by Schirach himself in the cours of his interrogation with the words "out of false loyalty he had morally identified himself with these acts of Hitler an Himmler.

This malicious speech which Schirach made in September 1942 is however, in another sense a very valuable point in favour of Schirach : in the course thereof Schirach speaks of a "Transfer of the Jews to the Ghetto of the East" Had Schirach known at that time that the Vienna Jews were to be sent away in order be murdered in an extermination camp, without doubt -in view of the purpose of this speech- he would doubtless not have spoken of an Eastern Ghetto to which the Jews had been sent, but he would have reported the extermination of the Vienna Jews; but even at that time, in the fall of 1942, he never had the slightest idea that Hitler wanted to kill the Jews. That he would never have approved of and never accepted, his anti-Semitism had at no time gone so far.

Schirach has also frankly stated here that he had at that time approved of Hitler's plan for a Jewish settlement in Poland, not inspired by anti-Semitism or hatred of the Jews, but by the reasonable consideration, that with regard to actual conditions, it would have been in the Jews own interests to leave Vienna for Poland, because the Jews could not in the long run have been able to stay in Vienna for the furation of the Hitler-regime, but would have always been exposed to serious persecutions ; as Schirach declared on 24 May 1946, "considering Goebbels' temperament" it always seemed possible that incidents, like those of November 1938 could be evoked in one night, and under such conditions of legal unsecurity the existence of the Jewish population in Germany would be unimaginable. He thought that Jewry would be safer in a restricted settlement area of the General Government than in Germany and Austria, where it was exposed to the "whims of the Propaganda Minister" who indeed had been the main supporter of the radical anti-Semitism in Germany.

H0183-0020

Schirach was well aware of this fact. He could not shut his eyes to the knowledge that the drive against the Jews in Germany daily became obviously more drastic, more fanatic and so very much more violent.

This conception of the Vienna speech of September 1942 and the true cause of its genesis, coincide with the declaration of the defendant Schirach at the meeting of the Town Councillors of Vienna on 6 June 1942 (No. 3886 PS), namely that in the late summer and fall of this year all Jews would be expelled from this city, and likewise with the file note of the Reichsleader Bormann of 2 October 1940 (USSR 142), according to which, at a social meeting at Hitler's home, Schirach had remarked that he still had more than 50,000 Jews left in Vienna, which the Governor General of Poland must take over from him. This remark finds its reasoning in Schirach's embarassing situation at that time. Hitler on the one hand pressed more and more for the expulsion of the Jews from Vienna; the Governor General Dr. Frank on the other hand strove against the acceptance of the Vienna Jews in the General-Government. This disagreement was evidently the reason for Schirach discussing this fact at the above mentioned meeting on 2 October 1940, in order to avoid renewed reproaches of the Fuehrer. He Schirach personally was not interested in the slightest in the removal of the Vienna Jews, as was proved by the testimony of the witness Gustav Hoepken regarding the discussion between Schirach and Himmler in November 1943. May I also add here concerning that discussion and that conference with Himmler that during that conference, Schirach presented the point of view that one should leave the Jews in Vienna because they were wearing the Star of David anyway. That has been testified to by the witness Hoepken as being a statement made by Schirach during the conversation. I continue: Hitler demanded it, and Himmler insisted on its execution.

The Prosecution has now thought is possible to reproach Schirach with having made another malicious anti-Semitic remark, namely a speech which he supposedly made in late December 1938 at a Student's Meeting at Heidelberg. Across the Neckar River he pointed to the old University town of Heidelberg where several burned-out synagogues were the silent witnesses of the anti-semitic activities of the students of Heidelberg and I quote from the affida-

H0183-0021

where the "little stout Reichstudents'leader" -as it is stated literally- is said to have by this incident approved and praised the anti-Jewish pogroms of 9 November 1938 as a heoric act.

H0183-0022

This accusation, as already mentioned, is supported by the declaration in lieu of oath of a certain Gregor Ziemer. However, there can be no doubt that this claim of Ziemer is false. Ziemer never belonged to the German student movement or the Hitler Youth, and obviously was not personally present at the student assembly in question. The affidavit does not state from what source he is supposed to have obtained his knowledge. However, that his claim is false is already proven by his description of physical appearance when he speaks of a "little, fat student-leader"; for this does not at all apply to Schirach. Perhaps it would to some extent apply to his successor, who was Reich Student Leader at the end of 1938, but it certainly was not Schirach. As is known he had already in 1934 given the office of Reich Student Leader back into the hands of the Fuehrer's deputy, after he himself had in the meantime been appointed Reich Youth Leader. Schirach did not hold a speech at the end of 1938 or at any other time before Heidelberg students, and by the affidavit of the witness Mrs. Maria Hoepken, Schirach Document Book No.3, it has been clearly proved that at the time stated Schirach was not in Heidelberg at all. Schirach has also stated this under oath and his own statement can lay claim to credibility because he has not white-washed anything for which he was responsible, and he has not wrongfully denied anything, but on the contrary has accounted for all his actions like a man and with love of the truth during his entire examination.

Still another fact, decisively confirms that the claim of the Ziemer affidavit is untrue, at any rate in regard to the person of Schirach. In the presentation of evidence it happened to be stated by chance how Schirach reacted to the November-pogroms of the year 1938.

The witness Lauterbacher has informed us here, as already mentioned on another occasion, that Schirach on 10 November 1938 had condemned most vehemently the events of 9 November 1938 before his collaborators, and declared that he felt ashamed for the other s and for the whole party. The 9 November 1938, Schirach said,"would go down in German history as a unique german cultural disgrace. Such a thing could have happened with an uncivilized people but it should never have occurred with us Germans who imagine ourselves to be a highly civilized people." The Youth Leader had to prevent such excesses under any circumstances. Of his own organization he did not wish to hear anything like it, neither now or in the future. The Hitler Youth,

H0183 - 0023

under all circumstances, must be kept outside such things under any circumstances.

Schirach then had all the offices of the Hitler Youth informed by phone from Berlin in the same sense. If Schirach in November 1938 condemned and criticized in such an extremely sharp manner the events of 9 November 1938, it is impossible for him to have celebrated at about the same time the bloody acts which had been committed and thus have incited the Heidelberg students and the question therefore arises as to why a single participant of that student meeting in Heidelberg was not brought here as a witness, but that the Tribunal was satisfied instead with a witness who could only testify from hearsay. Moreover, the representative of the Prosecution did not revert to this alleged Heidelberg speech, during the cross examination and thereby acknowledged Schirach's own presentation of the facts as correct.

It is also a very significant fact that the Hitler Youth did neither participate in the excesses of 9 November 1938, nor did they commit any violence of such a kind either before or afterwards. The Hitler Youth, at that time, was the strongest Party organization, it comprised about 7-8 million members and in spite of that not one single case has been proved where the Hitler Youth participated in such crimes against humanity, although its members were mainly of an age, which according to experience, is only too easily tempted to participate in excesses and acts of brutality. The only exception which has been claimed so far concerns the testimony of the French woman Ida Vasseau, who is said to have been head of an Old People's Home in Lemberg and who is supposed to have claimed, according to the report of the Commission, USSR-6 "that the Hitler Youth had been given children from the Ghetto in Lemberg whom they used as living targets for their shooting practice." This single exception, however, which has been claimed so far but not proved, could not be cleared up in any way, particularly not in the direction of whether members of the Hitler Youth had really been involved. But even if there had been such a single case among the 8 million members during 10 or 15 long years, this could not in any way prove that Baldur von Schirach had exercised an inciting influence, and if I may add here, at a time when he was no longer Reich Youth Leader.

H0183 - 0024

THE PRESIDENT: We will adjourn now.

(A short recess was taken.)

DR. SAUTER: Judges in the Bench, then I shall continue with page 36 of my final argument.

Let us at least examine all the speeches and articles which von Schirach wrote as Reich Youth Leader and which are in the possession of the Tribunal in the document book. These extend over a long period of years, yet they do not contain a single word inciting to race hatred, preaching hatred of Jews or exhorting the youth to commit acts of violence or defending such acts. If it has been possible to keep the members of the Hitler Youth, who numbered millions, apart from such excesses it proves the fact that the leaders endeavored to imbue the youth with the spirit of tolerance, love of his neighbor and respect of human dignity.

Just how von Schirach thought about the treatment of the Jewish questio is clearly evident from the scene which occurred in spring 1943 on the Obersalzberg and which is also described in the affidavit of the witness Maria Hoepken (Doc. book Schirach No.3 figure 5). In this case I refer to the scene where Schirach's wife told Hitler in his home

how she had witnessed with her own eyes from a hotel window in Amsterdam how the Gestapo had deported hundreds of Dutch Jewesses. Schirach himself could not dare at the time to bring such matters to Hitlers attention; a decree of Bormann had expressively prohibited this to the district leaders (Gaulieters). Schirach therefore agreed with his wife that the latter should try to gain an improvement in the treatment of the Jewish question with Hitler. She did not succeed in this; Hitler dismissed Frau von Schirach with the harsh words "these were setimentalities". Because of this intervention on behalf of the Dutch Jews, the situation of the defendant von Scirach had become so critical that he preferred to leave the Obersalzberg immediately in the early morning of the following day, and from that time on, Hitler was on principle no longer accessible to Schirach.

This intervention of Schirach for milder treatment of the Jewish question perhaps also contributed to the fact that Hitler, a few months later, in the summer of 1943, seriously considered having Schirach arrested and having him brought before the People's Court, for the reason alone that Schirach had dared, in a letter to Rechsleiter Bormann, to describe the war as a national disaster for Germany.

In any case, all this shows that Schirach forcibly stood for moderation in the Jewish question, and that in a manner whereby he endaggered his own position and existence. In spite of the fact that he was an anti-Semite - and it is just because of this that it deserves attention - he withstood all pressure from Berlin and refused to have an anti-Semite special edition published in the official journal of the Hitler-Youth, while he had published his own special editions for an understanding with England and for a more humane treatement of the Eastern nations. It is not less worthy of consideration that Schirach, in conjunction with his friend Dr. Colin Ross, strove for the emigration of the Jews into the neutral foreign countries in order to save then from being deported to a Polish Ghetto.

The prosecution has endeavoured to justify the accusation of a certain share of the defendant von Schirach in the responsibility for the pogroms against Jews which occurred in Poland and Russia by trying to use against him the so-called "Reports on practice and Situation", which were regularly sent in by the SS to the "Commissioner for Defense of the Reich in Military Administrative District XVII".

H0183 - 0025

H0183 - 0026

In fact it must be said -- and I emphasize -- if Schirach had at that time had cognizane of these regular "Reports on Practice and Situation of the Operational Groups of the Security Police and the Security Service" in the East, then this fact would indeed entail for him a grave moral and political charge. He could then not be spared the reproach that he must have been aware that, apart from the military operations in the East, horribly cruel mass murders of Communists and Jews had also taken place. The character picture we have had so far of von Schirach, who was also described by the prosecution as a "cultured man", would be obscured very materially if von Schirach effectively had seen and read these reports. For he would then have know that in Latvia and Lithuania, in White Ruthenia and in Kiev, mass murders had taken place, and this quite obviously without any judicial proceedings of any kind and without sentence having been passed.

What has, however, been proved by the evidence?

The reports referred to went, as to dozens of other offices, also to that of the "Reich Commissioner in Military Administrative District XVII" and, moreover, with the express direction "for attention of Government Councillor Dr. Hoffmann" or "for attention of Government Councillor Dr. Fischer". From this style of address and from the way in which these reports were initialled at the office of the "Commissioner for Defense of the Reich", it can be established beyond question that Schirach did not have an opportunity of seeing these reports and that he obtained no knowledge of them in any other way either.

Schirach, as it well known, occupied three extensive offices in Vienna: as Reichsstatthalter and Reich Defense Commissioner he was the chief of the whole State administration; as Lord Mayor he was the head of the Communal administration; and as District Leader (Gaulieter) of Vienna, he was the top of the local Party machine. It is only natural that Schirach could not fulfill all these three tasks by himself, especially since in 1940 he had entered a completely different field of tasks, and first had to become accustomed to the work in the state as well as in the communal-administration. He therefore had a permant deputy for each of his three tasks, and this was for the affairs of

H0183 - 0027

the state administration, Regierungspresident of Vienna, Dr. Del-Brugge. Dr. Delbruegge had to handle the currect affairs of the state administration completely on his own. Schirach occupied himself only with matters of the state administration with regard to such matters which were directed to him by his permanent deputy Dr. Delbruegge in written form or about which Dr. Delbruegge or one of the departmental assistants reported to him orally.

Now, if this had been the case with regard to the aforementioned "Situation and Experience Reports", then this would have somehow been noted on the documents in question. On the "Experience and Situation Reports" submitted there is not a single note, however, which shows that this report was submitted to the defendant von Schirach or that he was orientated about it. This can also be understood without further explanation; because after all, the experiences which the police and the SD had accumulated in the partisan struggles in Poland and Russia, were completely inconsequential for the Vienna administration; therefore there was not the least cause to inform the defendant von Schirach in any way, who was very much overburdened anyway with administrative matters of all kinds, of these reports.

This result, Gentlemen, not only depends primarily on the testimony under oath of the defendant, but also on that of both witnesses Hoepken, who as Chief of the "Central Office" and/or as adjutant of the defendant were able to give the most exact information about the Vienna conditions. It is certain that these "Experience and Situation Reports" never came into the distribution of the "Central Office" in Vienna, but only into the distribution of Regierungspraesident Dr. Delbruegge, and that Hoepken, as Chief of the Central Office, as well as Wieshofer, as adjutant of the defendant, likewise did not have any previous knowledge of these "Experience and Situation Reports" but came to see them for the first time here in the Court Room during their questioning.

In any case, the result is, as has been proven by the file notes which are on the documents, that Schirach did not have any knowledge whatsoever of these reports, and that he is not co-responsible for the atrocities described therein, and therefore cannot be criminally charged on account of

H0183 - 0028

these activity reports. And I should like to interpolage here, both of these experts, Dr. Fischer and the other gentleman, neither of them knew the defendant. I shall continue.

In order to judge the policy of Schirach, his behaviour during the last weeks in Vienna is also not without importance; for Schirach it was only natural not to carry out the various insane orders which came from Berlin at that time. He has turned the lynching-justice concerning enemy aviators which was ordered by Bormann far from himself, and likewise the order to hang defeatists without pity, regardless whether they were men or women. His summary court has bever even been in session, his summary court has not pronounced a single death sentence. No blood stocks to his hands. On the contrary, he has done everything, for example, in order to protect enemy aviators who had made an emergency landing from the excited mob, and he has, as we have heard from the witness Wieshofer, for example, immediately sent out his own motor vehicle, in order to bring American aviators who had parachuted, into safety. Thereby he again placed himself in conscious and deliberate contrast to an order of Bormann that such

H0183-0029

aviators were not to be protected from lynching acts of the civilian population. He also did not pay any attention to the order that Vienna was to be defended to the last man, or that in Vienna, bridges and churches and residential section were to be destroyed, and he abruptly refused the order to form partisan units in civilian clothing or to continue the hopeless struggle in a criminal manner with the aid of the "Werewolf." He refused such demands from his sense of duty, especially since this would have caused him to violate international law.

The picture of the character of the defendant von Schirach would be incomplete, if we did not recall at this moment in addition the declaration which he deposed here in the morning of 24 May 1946. I am speaking of that declaration in which he has described Hitler as a millionfold murderer, here before the whole German people and before the whole world public. Schirach has already in the past year made declarations which show his feeling of responsibility and his preparedness to answer for his actions and those of his subordinates to the full extent. This was the case on 5 June 1945, for example, when he was hiding in Tyrol, and heard over the radio that all Party leaders were to be brought before an Allied court. Schirach, as a result of this, reported himself immediately and in his letter to the American local commander stated he was doing this in order to prevent others being made to account for his actions, who had only executed his orders. He surrendered voluntarily, although the English radio had already announced the news of his death, and although Schirach could have hoped to remain in his hiding place undiscovered. This manner of action deserves consideration in judging the personality of a defendant and in estimating his guilt.

The same love of responsibility was then shown by Schirach in the autumn of 1945 as he was heard by the Prosecution. He believed then that his successor Axmann had fallen. In spite of this, Schirach did not attempt to pass his responsibility on to his successor; on the contrary, he expressly stated that he assumed full responsibility also for the time of his successor, as well as for what had been done under his successor in the Reich Youth Leadership. The keystone in this line is now fashioned by the statement which Schirach made here on May 24th 1946 and which went out of this room into the wide world, into all the German lands up to the last farm, up to the last workman's hovel.

H0183-0030

Gentlemen of the jury, any man may err, he may even make mistakes that he later may not himself understand. Schirach also has erred; he has brought up the youth for a man whom he for many years held as unimpeachable and whom he must now brand as a diabolical criminal. In his idealism and out of loyalty he remained faithful and true to his oath to a man who deceived and cheated him and the German youth and who, as we learned here from Speer, up to his last breath placed his own interests higher than the existence and the happiness of 80 million people.

Schirach is perhaps the one defendant who not only clearly realized his mistakes -- which you may judge whichever way you like -- but who confessed them most honestly and who through his plain speaking prevented the creation of a legend of Hitler in the future. Such a defendant must be given the benefit of his trying to repair as far as lies within his possibilities the damage which he has caused in good faith.

Schirach has tried to do that; he took pains to open the eyes of our people about the "Fuehrer", in whom, together with millions of Germans he saw, through many years, the deliverer of the Fatherland and the guarantor of its future. He did this so the foreign countries could see how the conditions in Germany in the last years had come about, and just who was responsible for them.

But above all, the former youth leader, in making his statement on the 24th of May 1946, wanted to tell the German youth openly that so far, quite unknowingly and with the best intentions, he had led them astray and that now they must take another direction, if the German people and the German culture were not to perish. In this Schirach did not think of himself; he was not thinking of his life's work which had been destroyed; he was thinking of the youth of today, which not only is facing the ruins of our cities and dwellings, but is also wandering about among the wreckage of its former ideals; he was thinking of the German youth, which is in dire need of a new orientation and which must base its future existence on another foundation.

Schirach hopes that the entire German youth has heard his words. What was particularly valuable in his confession of May 24th 1946 was his assurance that he alone bore the guilt for the young people, just as he

H0183-0031

formerly bore the command over them. If this point of view is acknowledged as being right, and if the necessary conclusions are drawn therefrom, the result would be for our German youth a valuable outcome of these trials.

My Lords, Judges, I am now turning to the end of my considerations of the case of Baldur von Schirach. In the treatment of this case I desisted from making general statements, and especially those of a political nature. Rather, I confined myself to the evaluation of the personality of the defendant, his actions and his motives.

In this connection, I should like to add, to complete the picture, that these considerations and this evaluation by the defense have shown that the defendant is not guilty in the sense of the indictment and cannot be judged and sentenced for he did not commit a punishable act, and you as judges will not judge political guilt but rather criminal guilt in the sense of the penal code.

At the end of my considerations of the case of von Schirach I should like to have the privilege of making a few general statements, going beyond the personality of von Schirach.

Gentlemen of the Bench, you are the highest tribunal of our times; the power of the whole world stands back of you; you represent the four mightiest nations on earth; hundreds of millions of men, not only in the defeated countries, but also in the victorious nations listen to your opinions and anxiously await your judgment, ready to be taught by you and to follow your advice.

This high authority gives you the possibility of doing much good through your verdict and its foundations, in order that out of today's disaster the way to a better future may be found for the benefit of your own people and for the blessing of the German people.

Today, gentlemen of the Bench, Germany lies on the ground, a poor people, the poorest of all. The German cities are destroyed; the German industry is smashed to pieces; on the shoulders of the German people rests a national debt representing many times the whole national wealth and which means want and poverty, hunger and slavery for many generations of the German people, if your people do not help us.

H0183-0032

The argument supporting your verdict will in many respects point the way for the help needed to emerge from this desperate plight.

For reasons of sentiment, it may be hard for you to consider this idea and to take it into account, when you think of the misfortune which the past six years also brought to your own countries It becomes doubly hard, because for months these Court proceedings revealed nothing but crimes, crimes committed for a great number of years by a tyrant with the misuse of Germans and in the name of this same German people of whose future you as judges are now asked to think.

Gentlemen of the Bench, Hitler is dead, with him his tools who in these years committed crimes without number tyrannizing over Germany and nearly all of Europe, and violating the German name for generations to come. The German people on the other hand lives and must be allowed to live if half a universe is not to fall into ruins.

With this trial and during this epoch, the German people is undergoing a very serious operation; it must not bring death; it must bring recovery. Your verdict can and must make a contribution in that direction, so that in future the world may not see in every German a criminal, but revert again to the concept of professor Arnold Nash of Chicago University, who a few days ago, when questioned about the purpose of his present trip to Europe replied: "Every scientist has two fatherlands, his own and Germany." These words ought to be a warning also for all of those critics who even today see their task to be only in the fact that with propaganda means of every sort to incite against everything Berman and to tell the world that at least every second person in Germany is a criminal.

You, as objective judges will not wish to forget one thing: There always was and there still is today another Germany, a Germany that knows industriousness and economy; a Germany of Goethe and Bethoven, a Germany that knows loyalty and honesty and other good qualities which in past centuries were proverbial for the

H0183-0033

German character. Believe me, gentlemen of the Tribunal, in this epoch, as Germany regains consciousness after a severe illness, as she proceeds to rebuild a better future from the ruins of an evil past, a future for its youth which has no part in the crimes committed, at this time seventy to eighty million German people are looking to you and are awaiting from you a verdict which will open the way for a reconstruction of German economy, of the German heart and true freedom.

You are, gentlemen, truly independent judges, not bound by an written law, not bound to any legal paragraph, pledged to serve your conscience only, and called by destiny to give to the world simultaneously a legal order which will preserve for future generations that peace which the past was unable to preserve for them. A well-known democrat of the old Germany said this in a recent article on the Nuernberg Trial: In a monarchist State justice would be administered in the name of the King; in Republic Courts would pronounce their rulings in the name of the people but you, the Nuernberg Tribunal, you should administer justice in the name of humanity.

It is, indeed, a wonderful thought for the Court, an ideal aim, if it could believe that its verdict could realize the commands of humanity and that for all time it could prevent crimes against humanity. But, in certain respects this would still remain an unsteady foundation for your verdict, a verdict of the magnitude which confronts you. Because ideas on what humanity demands or prohibits in individual cases may vary, depending upon the epoch, the people, the attitude of the Party according to which one judges.

I believe, gentlemen of the Bench, you may find a reliable foundation for your verdict when you revert to the phrase already coined by the ancient Romans, the phrase which endured throughout centuries and which certainly will still remain valid in ages to come:

Justitia est fundamentus regnorum (Justice is the basis of every state.)

H0183-0034

In this way, the German people and with them the entire world is expecting from you a judgment which will not be hailed just today by the victor nations of today as the last victory over Germany, but which history will recognize as just; pronounce your verdict in the name of justice.

THE PRESIDENT: I call on Dr. Servatius for the defendant Sauckel.

DR. SERVATIUS: (Counsel for defendant Sauckel): Mr. President gentlemen of the Tribunal:

The defense of the defendant Sauckel has, in the first place, to deal with the charge of slave labor.

What is slave labor?

One cannot accept this as an established concept comprehending all the occurrences with which the defendant Sauckel is, in a bewildering abundance, charged under the heading slave labor.

Those actions, particularly, ought first to be examined from a juridicial point of view. The legal basis for this examination is the Charter.

However, this Charter does not say what is to be understood by slave labor and what by deportation. Therefore, these concepts should be clarified by interpretation.

Article 6 of the Charter speaks in two passages and from two different points of view of deportation and of slave labor.

Deportation is called both a war crime and a crime against humanity, and forced labor appears as well as slave labor under the heading of war crimes, and as enslaving under the heading of crimes against humanity.

The question, under what heading the deployment of labor of the defendant Sauckel should fall is of decisive importance; if it is a war crime, then it should be judged exclusively by martial law. If it is a crime against humanity then the latter presupposes the commission of a war crime or of a crime against peace.

It follows thereof that deportation mentioned in Article 6 (b) cannot be the same thing as deportation according to Article 6 (c) nor can forced labor according to Article 6 (b) be identical

H0183-0035

with forced labor of Article 6 (c).

THE PRESIDENT: That paragraph of your speech which is in English on page 2, the second paragraph:

"It follows thereof that deportation mentioned in Article 6 (b) cannot be the same thing as deportation according to Article 6 (c) --" is not altogether clear to the Tribunal. Could you make it clearer?

DR. SERVATIUS: In Article (b), we deal with crimes against humanity whereas in Article 6 (c) we speak of war crimes. In both articles the expression deportation and forced labor are used but they have to be differentiated and when we examine this we turn to the fact of differentiation and I believe my further statements will make that differentiation quite clear.

I am turning now to the matter of terminology, the terminology as used in the Charter.

The difference between the two kinds is to be found in the fact that something contrary to humanity has to be added to the war crimes.

The correctness of this interpretation may also be recognized in the terminology of the Charter, however fluctuating it may be. For instance, the Russian text for deportation as a war crime chooses the word "uvod", which only means removal from a place, whereas, on the other hand, it uses for crimes against humanity of the same kind the technical expression "ssylka" under which penal deportation under the rule of the czars is understood as identical in sense with deportation as penal deportation.

THE PRESIDENT: The Tribunal must adjourn.

THE MARSHAL: The Court will remain adjourned until a quarter to two.

(A recess was taken until 1345 hours.)

H0183-0036

AFTERNOON SESSION

(The hearing reconvened at 1345 hours, 18 July, 1946.)

DR. SERVATIUS: I talked of the terminology of the word "deportation", in the Russian text, "ssylka". I pointed out the distinction, the word meaning only transportation, or meaning a deportation as a form of punishment. From t one may conclude that the deportation mentioned can only be regarded as a war crime against humanity when it assumes the penal character of a transportation of prisoners. Yet the question arises whether, beyond this, according to the Charter, any removal of the population is punishable as a war crime, without considering whether it occurs for deployment of labor or for other reasons.

According to the text of the Charter, the latter seems at first sight to be the case, asit renders punishable "removal for slave labor, or for any other purposes."

Upon closer examination, however, it becomes evident that this rule does not seem to be meant in such a sense, as there are cases in which a removal is not only consistent with international law, but even becomes imperative.

Accordingly, the Charter could only be understood to mean that the prerequisite of the punishable is not just plain "removal" but the composite concept "removal for slave labor" and "removal for any other purpose".

The clause "or for any other purpose" should be understood so as to mean only that an illegal purpose corresponding to slave labor exists. If removal of any kind was to be made punishable, then the qualifying addition "for slave labor or for any other purpose" would be contradictory to common sense.

This identification is important for the defendant Sauckel, as otherwise the existence of deportation classified as a war crime would be evident from the acts admitted by him. Just as for the various kinds of deportation, the difference between the kinds of slave labor according to the Charter should be clarified. Here, too, a clue for the interpretation is given by the terminology of the different linquistic versions of the text, but not because of their clarity and consistency, but by their very opposite:

The English version speaks of "Slave labor" as a war crime and of "enslavement" as a crime against humanity; the French version states "travaux

H0183 - 0037

forces" and "reduction en esclavage", the Russian version accordingly "rabstvo" (-Slavery) and "poraboschtschenie" (-enslavement). It is not discernible how the chosen terms differentiate in re.

Starting from the fact that labor inconsistent with humanity must be carried out under more severe conditions than other labor, and considering that "slave labor" appears to be the severest form of labor conditions, one sees tha no definition can be derived from this terminology of the Charter, rather than an ethical valuation and stigmatization of the incident is intended.

Accordingly, an objective division of the kinds of labor should be carried out, independent of the terminology, by considering exclusively the degree of severity of labor conditions. If one tries to analyze the terminolo used, one finds the designation "enslavement", "esclavage" and "Poraboschtschni for the inhuman form of labor, whereas the labor not inconsistent with humanity is called "forced labor", "travaux forces" and "prinudidjenaja rabota". Slave labor ("Slave labor, travaux forces and rabstvo) consequently is the general term comprehending both kinds.

What does this verification mean for the defense of the defendant Sauckel?

The defendant Sauckel admits having negotiated the "forced labor" in the form of compulsory labor which, as stated before, is being termed by "slave labor" in general.

He denies, however, having demanded slave labor, which could have bee considered as inhuman labor, i.e. enslavement.

A different standard applies here, just as for deportation, to the facts of these two cases; "compulsory labor" is but a war crime and is to be judged according to rules of war; the crime against humanity has got, as alrea stated above for the deportation as crimes against humanity, the additional features: connection with war crimes or crimes against Peace.

If it can be proven that the mobilization of manpower, as ordered by the defendant Sauckel, was permitted by the rules of war, then the same act canne be held to be a crime against humanity.

The indictment too has made a difference as to the kinds of labor. I has treated, under par. three, chap. VIII, H, as a separate war crime under the

H0183 - 0038

title of "Conscription of civilian labor", the mobilization of manpower directe by the defendant Sauckel, which I shall call "regulated labor conscription", "goordneten Arbeitseinsatz" and speaks here

H0183-0039

only of "forced labor", the French version speaks here of "travaux forces" and uses terms such as "les obligeront a travailler" and "mis en obligation"; the Russian version follows this and also speaks only of "enforced labor" as "prinuditjelenaja rabota", but not of this being slave labor.

The defendant Sauckel does not deny the facts taken here as a basis, but I shall submit the legal reasons which justify this mobilization of labor and I shall prove that it does not involve any war crime inconsistent with international law.

The rules of international law are authoritative when considering the question whether "regulated labor conscription" is a war crime. The Charter cannot prohibit what international law permits in wartime. Such international law is laid down in the agreements on rules of war and in the general legal principles and usages as they are applied by the States.

The prosecution, when judging the labor conscription as a war crime, bases it on the definitions of the Hague Convention on land warfare, as well as on the agreements and rules of war and the criminal codes of the countries concerned.

If it is shown that the labor conscription is permitted by international law, then a judicial inquiry into the penal regulations is, of course, not necessary.

The Hague Convention on Land Warfare can be considered as basis for the law of warfare with which we are concerned here. Whether it was recognized by all states involved here is of practically little importance, as for, inasmuch as it was not recognized, or cannot be directly applied, there is a gap in the international law which is closed in accordance with the principles of necessity for belligerent and with the duty for staying within the boundaries of humanity. The principles of international law as established in the Hague Convention on LandWarfare are in all cases an important guidance.

The prosecution quotes in the first place Article 46 of the Hague Convention in Land Warfare which is to safeguard the fundamental rights of the population. It is typical for forced labor that it restricts liberty, but it is exactly this basic right which is not protected by this article.

H0183-0040

If the Hague Convention on Land Warfare is examined for a definite rule concerning deportation and forced labor it will be realized that there is no such regulation. Just as in the sphere of air warfare and the use of new weapons, the Hague convention on land warfare could not deal with questions, which at the time of its drafting were far from the mind of the contracting parties. The first world war was still fought between 2 armies with already prepared material and the fight should be ended after it is used up. The idea of a long war which is a war of material and which requires a continuous production with all available labor was for the Hague Convention on Land Warfare no problem to be discussed.

Article 52 of the Hague Convention on Land Warfare which deals with the principle of the right for requisition touches on the matter under discussion, but it can be seen that the rules deal only with the merely local requirements of the army which appears to be equipped and which has only additional local requirements.

It is characteristic for the purely local meaning that the authority for requisitions is entrusted to the local commanders, in contract to Article 51 of the Hague Convention on Land Warfare which permits only an independent commanding general to impose compulsory contributions. The literature about the right for requisition in international law quotes accordingly only examples of local significance.

Although Article 52 of the Hague Convention on Land Warfare can accordingly not be directly applied, its basic principles are nevertheless binding on the belligerents.

The basic idea is that the army can demand practically everything that is necessary for the satisfaction of their requirements. There are only two limitations: it cannot take more than it needs and not more than is compatible with the resources of the country.

The idea of the local duty for supply, "ortlichen Leistungspflicht" is to adapt to modern warfare. The Hague Convention on Land Warfare thought of the use of smiths and wheelwrights which were necessary for the maintenance of the equipment of the army; work inside the country of the occupying power was, with regard to the undeveloped transportation conditions, out of the question and could not be considered.

H0183-0041

Today, the necessary work cannot be done any more near the frontlines but must be done in the belligerent's own countries. It must therefore be possible to demand labor where it can only be done and where it is necessary. It must be possible to demand this work also for the new war requirements of mass production for the current replacements.

What is necessary at any given time can be demanded and the amount depends on the respective conditions. If in earlier times, according to the principle: the war supplies the war, the equipping of the army, detached from the homeland with regard to transportation, was also done on a large scale in the occupied territory, it must be possible to day to supply the army by moving the workers to the factories in the country of the belligerent. The evolution of the law of Warfare is influenced by the requirements to which this law has to serve.

With the basic idea of the duty for supply the basic idea of the limitation has to be accepted. These limitations must also be interpreted in accordance with the changed conditions.

If the duty for supply is justified, no more work can be demanded than the occupying power demands from its own people athome. The intensity of the war as total war must be taken in consideration. The duty for supply may hereby become very large.

The meaning and thepurpose of the Hague Convention on Land Warfare is certainly not to place the nationals of a defeated state in a better position than those of the victorious state which occupies the country. This, however, would be the result if the Hague Convention on Land Warfare would be interpreted according to its original wording. If this is claimed, France which had unconditionally capitulated, as well as the other occupied countries could have looked on in security how Germany, strangled by the blockade, exhausted herself in an indefatigable struggle in sacrifices of life and property. Can one really demand that the prisoner in a besieged fortress lives better than the defender of the fortress?

If Germany could live today according to the idyll of the Hague Convention on Land Warfare, this would be preferable to the burden of the peace treaty to be expected.

H0183-0042

Actually, the Hague Convention on Land Warfare has not been adhered to in its original interpretation, if it is true that already before the conclusion of the armistice agreement the Soviet Union as occupying power transferred the population on a large scale from the eastern parts of Germany for work outside Germany. The Tribunal could obtain official information about this through an inquiry with the Control Council. Also I have information that German civilian internees are used for work in France today. Here too the Tribunal could obtain official information.

The second limitation of the duty for work is embodied in the rule that no participation in war enterprises against the fatherland of the worker can be demanded.

Any work for the occupying power benefits indirectly its war effort; the prohibition is therefore restricted on direct participation in "operations' of the fighting force. The literature on international law contrasts the participation in military operations with the permissible participation in preparations.

A participation in war operations in this sense was asked of no workers; rather the purpose was to keep workers employed unmolested, away from these operations.

Consequently only such activity, as is directed against one's own country is forbidden. Thus, the feeling of the individual is to be taken into consideration. The protection of the enemy state is not aimed at. Wherever therefore the individual renounces his country and, in the struggle of ideologies, opposes the government of his country, such a restriction cannot be kept up. In connection with this it is pointed to the great amount of foreigners, who adopted such an attitude and who, in part, still live in Germany today.

The same applies, when the state, to which the worker belongs, has ceased fighting.

This question is of special importance with regard to the obligation to work in the armament industry. The rules of the Geneva Convention, with regard to work, permissible for prisoners of war are known. The basic notion, that no one may be forced to make weapons against his own brother, must apply to

H0183 - 0043

civilian workers also.

The fact, however, that one's country is no longer in a state of war is one of the reasons that nullify this restriction. The need for protection also ceases to exist, when a country - though legally participating in war - no longer is able to furnish proper resistance in the field with fighting forces and thus ceases to exist as a military object of attack.

The fact, that this very country has allies, who fight for it, cannot arbitrarily extend this restriction beyond agreements of the Geneva Convention; it also is not the duty of a subject of a State to protect allies fighting for him and to participate in the policies of his government.

H0183-0044

Puppet Governments cannot change reality. Recognition cannot be granted to them unlessthey come forward as independant fighters under command of their own and if they recognised as such.

These aspects apply to all States defeated by Germany.

At the time of the mobilization of labor only England, the United States and the Soviet-Union were active combatants against Germany. Englishmen and Americans were not subjected to this mobilization, although citizens of the Soviet-Union were in part used in the armament production. The legal position of citizens of the Soviet-Union is however fundamentally different.

Under Document EC 338/USSR 356, the prosecution submitted a decision of the peoples commissars of 1 June 1941. This decree involves the utilization for labor of prisoners of war . It deals however also with the employment of interned civilians. According to it, armament production is not forbidden for both forms of labor. However, two restrictions are provided for in the decree, namely : work in the combat zone, and such work as might be done by an orderly.

Reciprocally speaking, no objection can be raised against the employment of Soviet citizens in armament production. During examination before the Tribunal, the witness General Paulus confirmed that prisoners of war were employed in factories of the Soviet Union and that in a State with a directed economy they will be employed in the armament industry only for the duration of the war. According to the decree it must be assumed that these workers were employed in the armament production also.

The significance of such a violation of the principle of forbidding armament production lies in the grave consequence, that the formulation of a generally recognised rule of the international law in the modern field of utilization of manpower cannot be preven. Under these circumstances therefore Germany was likewise free to employ workers of the Soviet-Union and workers of all other States in the armament production.

If on one hand the Hague Convention on land warfare does not oppose regulated utilization of manpower then there remain further international aspects permitting such a utilization of manpower.

H0183-0045

The permission of the Government of the occupied State is of primary consideration. This permission has been given by France. The objection that Marshal Petain's Government was not a constitutional Government is invalid, for it was the legitimate successor to the provisionary armistice Government. That it represented the French State to all foreign Governments is of decisive consideration in international relations. This authority of representation was confirmed by the United States, by her maintainance of an Ambassador in Vichy, even after her own entry into the war. Great Britain also agreed upon terms of an armistice with a General of the Vichy Government in Syria in 1941.

This Government once recognised could not lose its lawful position by the simple declaration of an opposing Government even though this opposing Government might have been recognised by the Allies. A Government loses its international position only if it is forced to transfer its actual power to the opposing Government. Up to such a moment it remains authority inside its sphere of influence.

The other objection that the Government of Marshal Petain was not free to deal as it wanted, and that consequently agreements with Germany in the field of utilization of manpower were reached by coercive measures and therefore invalid, is not justified from the point of view of international law.

Negotiations for aristice and peace treaties are always conducted under great pressure. That this does not infringe upon the validity of such treaties, cannot be denied from the point of view of international law. This has constantly been emphasized when refusing German demands for a revision of the Treaty of Versailles.

Agreements which are reached in periods between the armistice and peace treaty are subject to the same conditions. This also applies to the agreement with France with respect to the utilization of manpower. Thus, if -contrary to the statement of the defendant Sauckel- negotiations about the utilization of manpower were conducted in the form of an ultimatum, there could from the point of view of international law, still be no reason for an objection. Besides, Sauckel's influence surely could not have been so great, that he could have excerted an exessive amount of pressure.

The validity of such agreements can only be doubted under very special conditions, that is, when unusual duties have to be performed which obviously violate principles of humanity. For instance, if the agreements contain a liability to work under slavery conditions. The motive for these agreements was, however, to offer especially to the French workers favourable working conditions and salaries for their obligatory labour in Germany, and so to gain the willingness of the workers.

Military reasons too can command the evacuation of an occupied territory by parts of the population and therefore the shifting of manpower. This happens when the population participates in battle of partisans or resistance groups and so endanger security instead of behaving themselves peacefully according to their duty to obedience. Also to eliminate this support it is already sufficient if the population in the so-called partisan territories is being enlisted even against its will, for the support of the partisans. That such conditions were organized by Germany's enemies, in an increasing manner first in the East and later in the West, are looked upon today as patriotic achievements. In view of this one must not forget that the herewith connected shifting of workers was exactly the consequence of their action and that these actions were permitted by international law.

Evacuation had to be carried out in the interest of security and assignment of labor elsewhere already was necessary to uphold order. It is the right of the occupying power to utilize this labor in a regulated state economy as seems most practical in the prevailing conditions. Similar measures could also take place in areas of retreat after it was ascertained that the male population took illegally part in battle during the retreat when it was summoned by the enemy and sometimes even supplied with weapons.

Evacuation measures for the security of combat troops correspond with international law. To engage evacuated persons in new work is not only legal but also the duty of the occupation administration. The State which summons its members to fight and thereby intensifies the battle, is guilty of such an evacuation. The necessary retaliations therefore must be legal.

If such evacuations become necessary, then they must be carried out without undue suffering for the population. Thereto advance measures are necessary which alone can avoid these hardships.

H0183-0046

H0183 - 0047

This is the duty of the administration (Verwaltungspflicht) as confirmed in Article 43 of Hague Convention of Land Warfare.

Foreto appertain the proposals made by Sauckle for the evacuation of territories of retreat in France in the case of the invasion (document 1289PS These proposals were not materialized and can therefore not incriminate the defendant Sauckel.

This administrative duty can also demand to shift labor in order, to avoid unemployment and famine. This, for example, took place when the industrial areas of the Soviet Union were occupied and there were no more working possibilities and securing of supply after the population was unemployed because of the scorched earth policy chosen by the Soviet Union, and supply failed to arrive because of transport difficulties. Those military and administrative points of view of the international law can invalidate a number of reproaches, but they do not answer the basic question, namely, whether the enlistment of workers is also permitted outside the Hague Convention of Land Warfare, especially for the purpose of work, i.e. to enable the state to carry on the war through increase of production and thus release its own workers for front duty. A purely military emergency could give no excuse for disregarding international law. The endangered victory must not be pursuit by breaking the law because of necessity , because the law of warfare is supposed to correct just this conflict which is always connected with need.

International law decides to the contrary if a measure is concerned which has to be taken in order to safeguard the existance of the State. This is a law of self-preservation which every state is entitled to because higher institutions are lacking which could protect it from destruction.

It has repeatedly been stressed by all concerned that in this war our existence was at stake. This became evident for Germany after the ominous battles at the eastern front in the winter 1941/42. Whereas, up to that time, a general employment of foreign labor had not been necessary. Now new equipment had to be produced immediately. The employment of unskilled women and young people could not immediately relieve the situation. By later development of the war, especially by the aerial warfare, the armament demand

H0183-0048

were increased to such an extent, that, in spite of the increased employment of women and young people, the level could not be maintained. The means were exhausted.

The official figures the defendant Sauckel made public in his speech in Posen in February 1943 (see Document 1739-PS) proved that, already in 1939, at the beginning of the second world-war, more than twice as many women were employed than at the end of the first world-war, and that their number at the end of the second world-war had increased by another 2 million, to more than 10 million. This number is higher than the entire number of male and female workers in the armament industry at the end of the first world-war. In spite of that there was a shortage of labor. This has been confirmed by the witness Rohland of co-defendant Speer in document Speer-56, according to which co-defendant Speer also declared that foreign labor was needed under all circumstances.

H0183 - 0049

The difficult part of the problem did not consist in the question of female labor, where by introducing additional home-labor one went up to the limit, but in the procuring of specialists and men for hard and hardest labor. Among the 10 million German women who were at work, there were also the wives of officers at the front and others from the equivalent strata of society.

The opinion that in England the women were conscripted to work in a higher degree than in Germany is wrong. In Germany the women had to work till 45 years of age and later till their fiftieth, and they actually worked in factories and didnot have fake jobs of a social kind. Even the youth of school-age were conscribed to work from the tenth year of age, and from the sixteenth they were switched into the regular work organization or occupied in other services. Families were spread apart. Schools and universities were closed; their pupils worked in the armament-industry and even wounded men could not continue their studies. A grim fight was on for every person capable of work. Speer's reserve of workers did not exist. It is shown among others in inclosure 2 of the Wartburg-Document (RF-810) what efforts were made in this sector.

Another point of view, illustrating the necessity of deploying additional labor, is the fact that the powers in possession of colonies fetched labor from their colonies; e.g. France (see document RF-22, page 17), for instance, about 50,000 workers from North Africa and Indochina, which were under the leadership and direction of commissioned and non-commissioned officers. As Germany, because it had been refused colonies and on account of the blockade, could not fall back on these reserves, it had to have the possibility, in its fight for the existence of the state, to take labor where it was to be found inactive in occupied territories.

This is in outline the basis with regard to international law, for judging the regulated utilization of labor as a war-crime. One may, with regard to certain points, have a different opinion, and especially in international law, we find that a common interpretation of law will be formed but with difficulty. The interests of the members of the community of international law play an important part and are not always identical; legal principles are often not recognized because a state does not want to put itself officially in contradiction with its former actions, or because it would like

H0183 - 0050

to keep its hands free for the future.

As counsel for the defense, I am in a position to present an interpretation of law without such inhibitions. The significance of my statement for the defense, apart from the objective side, lies in the fact that defendant Sauckel, subjectively, was entitled to believe in the lawfulness of a regulated utilization of labor and that for him his behaviour did not appear in contradiction with international law. This was helped by the conviction which defendant Sauckel was obliged to gain from the permissibility of the well-ordered utilization of labor by the attitude of the superior offices. When Sauckel entered upon his office, foreign workers had already been enlisted in single actions, and he take it for granted that the State had proceeded legally. None of the highest offices had raised legal objections toward Sauckel These offices, especially the competent Foreign Office, as well as the highest civil and military offices in the occupied territories abroad, accepted his orders as a foregone conclusion and questions of doubt on international law were not raised.

For the opinion of the defendant Sauckel the attitude of the foreign offices concerned must have been especially decisive, and above all the consent of the French, as well as the Belgians who came to Berlin personally for discussions. From that followed the good co-operation with the local authorities in the occupied territories, as it was before the enemy propaganda intervened.

Whether the knowledge of breaking a law is necessary for committing a crime against international law may be left undecided; but to establish guilt, the knowledge of realization of all the criminal facts is necessary in order to pass a punitive sentence. Therefore it is necessary to realise that the action was carried out in violation of international law. The subjective part of facts and therewith a criminal guilt of the defendant Sauckel cannot be proven in regard to carrying out the regulated utilization of labor. A punishment of the defendant Sauckel could also not take place for another legal reason, even though the regulated utilization of manpower would really be a violation of international law. According to the Hague Convention on land warfare, no individual responsibility exists. The H.C.L. (H.L.O. differentiates between two kinds of war crimes; those which can be committed by an

H0183-0051

individual, such as murder and ill-treatment, and those which can only be committed by a belligerent. The regulated utilization of manpower is a proceeding which can only be initiated by the state. While the individual action is being punished according to the penal code of the individual States, so is a special regulation formulated for the offence of the belligerent, in Article 3 of the introductory agreement to the H.C.L. (H.L.O.) According to that there is only an obligation for compensation agreed upon. This agreement of the H.C.L. (H.L.O.) is still valid today, for by agreement of the Allies alone, this cannot be annulled. The Charter, which orders the immediate criminal responsibility of the state-organs or its executors, is void as far as it is contradictory to the H.C.L. (H.L.O.).

I do not have to refer to the fact that Germany, as one of the parties to the agreement, would have had to agree to the suspension of Article 3; there are other reasons which prove that this stipulation is still in force. An alteration of the H.C.L. (H.L.O.) in the sense of the Charter could have been accomplished by prescriptive law or general custom, due to the change of legal conceptions. The presupposition to this assumption would be, however, that the contracting powers would have relinquished their sovereignty, as only then the punishment of the state-organs would be possible. However, such a renunciati of the rights of sovereignty, as far as it is known to me, has not taken place to such an extent which generally would permit such a punishment. With regard to that, I refer to the general statements made by Professor Jahrreiss before the Tribunal.

I come now to the utilisation of manpower as a crime against humanity. If the regulated utilisation of manpower (geordneter Arbeitseinsatz) appears permissible according to international law, the question remains of the method of its execution, namely, the question on how long this utilization of manpower can still be regarded as regulated and when it will go beyond permissib limit.

What is understood by humanity, the Charter does not say. The meaning for that -- as far as international law is concerned -- can only be seen from the practice of the nations. If one wants to find the limits for actions permissible under international law, we must draw into comparison: the bombing of large cities and the use of the atom-bomb, as well as deportations

H0183 - 0052

and evacuations as they are still in progress today. These are all incidents, which have occurred before the eyes of the world and were regarded as permissible by the executing countries.

One runs again into the conception of necessity and finds that it is being interpreted in a very flexiblemanner. This should well be kept in mind if one examines the utilization of labour as to its violation against humanity. Its aim is not the strike-like killing of hundreds of thousands; however, it naturally carries hardships and certainly also mistakes, which arise unintentionally or are due to the failure of individuals. One must answer the question whether the wanted killing does not always weigh heavier than the temporary causing of other sufferings. It is to be added that the Charter does not prescribe a punishment for each violation against humanity, but only when the inhuman treatment has been committed in the execution or the connection of a crime for which the Tribunal is competent. However, the Tribunal is competent only for crimes against peace and war crimes. What concerns the crimes against peace, the defense can be permitted therefore to use the same inhuman treatment, while it is punishable when committed by the aggressor.

Or it must be considered a war crime. This is not the case when it deals with the wounding of subjects of its own nationality, for these are not protected by laws of warfare. A prosecution of an act against humanity directed against them can only happen when connected at the same time with a crime against Peace.

From an objective point of view, the deployment of labor has furthered the waging of the war which has been stated by the prosecution as a war of aggression or as a war violating treaties. If this is established and if it is proven moreover that the deployment of labour has been carried out in an inhuman way, then the facts stated by the Charter are implied and a crime against humanity has been committed without regard to the fact whether the deployment of labor was, as a matter of principle, allowed or not by the rules of war, as it has been committed in connection with a crime against Peace. But a punishment can be inflicted only if the culprit knows subjectively that an unlawful war is being waged and if he furthers it by his action. As the defendant Sauckel denies any such knowledge, it mustbe proven.

H0183 – 0053

The other possibility of committing the acts at issue lies herein that the inhuman act serves the carrying out of a war crime or is connected with it. Of the examples given by the Charter for violation of the rules of war, the following are, above all others, to be quoted in connection with deployment of labour: "Murder, illtreatments and deportation... committed on the civilian population." As shown by this enumeration, these war crimes which have been mentioned are not, how serious they may be, crimes against humanity by themselves.

H0183 - 0054

Something aggravating which is necessary to give the act the character of inhumanity must be added. As shown by the example of "extermination" and "enslavement" as an inhuman act, the acts in question must be objectively of a particular scale or particularly cruel. Subjectively however, an inhuman disposition of the culprit and the knowledte of the inhumanity of the act, i.e. the knowledge of the scale of the measure of the cruelty of its execution, must be added. How far these presuppositions apply to the defendant Sauckel must be investigated later on. A "regulated labor conscription", geordneter Arbeitseinsatz", allowed by international law never can be a crime against humanity in itself, but its execution can be carried out in such a way that it involves killings and ill-treatment, which for their part, may be war crimes.

Such an ill-treatment could be based on the regulation issued by the highest authority involved, which herewith takes responsibility. It can, however, be committed by subordinate offices acting on their own authority without knowledge or intention of the superior authorities. In this case, the head of the office which acts autonomously bears the responsibility. Finally, there may be the question of a purely individual act committed against the regulations in force. For such an act the acting individual is solely responsible.

It follows that the defendant Sauckel is responsible, to begin with, for such general orders and instructions only which he has given, but not, on the contrary, for autonomous acts of supreme authorities in the occupied territories or of supreme Reich authorities as Chief of SS and Police, which were not under his jurisdiction.

The orders and directions of the defendant Sauckel have been submitted and they must prove whether the deployment of labor ordered by him was in fact a regulated one or was tantamount to an "ill-treatment" of the population

The deployment of labor took place, apart from the call for volunteers, on the basis of a service duty "Dienstverpflichtung" which, as a matter of principle, was legally ordered, according to Hitler's orders, by the territorial commanders. The authority to issue such laws transcended the

powers of the defendant Sauckel, nor could he ask for the issue of any such laws. But he has approved of them and has made them the basis of his work.

The contents of those laws were consistent with the fundamental ideas of the German laws concerning compulsory labor service. Those laws were enforced by coercion.

The use of coercive measures is not necessary as long as the legal authority of the occupying power is acknowledged by the population; they become necessary only when this authority gets lost.

In this sense, the defendant Sauckel has repeatedly asked for the maintenance of the so-called Executive by enterprises for the sweeping of territories held by partisans and for the over-powering of the resistance movement.

No legal objections can be raised against the fact for this purpose he demanded the use of the therto appropriated state funds. He is wrongly incriminated only by the words "SS and Police" which have been connected by the Prosecution with the conception of crime. Such an incrimination would only be justified if the criminal character of the police had been proven and if the defendant Sauckel at that time had had cognisance of the criminal activity then taking place.

That force may be used in case of resistance against orders of the occupation force, cannot be disputed. The question is where are the limits of force and whether or not there are legal and illegal, admissible and inadmissible measures of force.

If fundamental laws are not valid when a state of siege is declared within a state, then this thought is all the more applicable to an occupying power during a state of war. Anyone who refuses to carry out the orders of the occupation-power, knowingly participates in the fight to which he is not entitled and he has to accept the consequences. Obedience is duty towards the occupying power and where patriotism and obedience are conflicting, the law decides against patriotism. The punishments which are dealt out are as such not subject to any limitations and the threats of punishment by an occupation power are for the effect of intimidation usually out of all proportion in

H0183-0055

H0183 - 0056

severity. The question is whether there exists a limit from the humane stan point which prohibits going unnecessarily beyond the purpose of the punishment and which, as beyond measure, appears to be unnecessary. Orders like the burning of houses which had been issued by subordinate offices independently in the carrying out of utilisation of labor, must be examined from this point of view.

This question is not easy to answer, if one considers the special circumstances and realizes that the thing involved here is an open battle between the occupying power and the population, with official support from the enemy. In case of uprisings and organized general resistance one can not reject the idea of the applicability of the military laws of the combat-troops. Necessity alone can be the decisive factor in this case. International law has put only one limit to coercive measures in forbidding, in Article 50 of the Hague Convention on Land Warfare, punishment of an entire population for the deeds of individuals for which the population could not be held responsible. Presupposition hereby is, that co-responsibility has been established through actual events and has not been construed through orders.

Wherein collective punishment may consist has not been stated. As limi must be considered the aforementioned: They must be the bounds of humanity, but in war this is a vague conception; necessity and suitablemess of the means to the end must always have the preference.

Next to the way of recruiting labor the conditions of work can represent an ill treatment which can be looked upon as a war-crime. On principle there can be no question of ill treatment, in case the foreign workers are treated generally the same way as the workers of the homecountry. A different treatment is only permissible in case special circumstances justify it. Whereas this putting on the same basis was in general carried out, the so called eastern workers were put on worse conditions.

The most striking item was here the limitation of freedom. If this wer arbitrary, it would be sufficient reason for declaring it an ill-treatment, But the reasons for this limitation of freedom were not arbitrary but were t

H0183 - 0057

needs of security of the state. During wartime the stay of an enemy alien in the state-area always represents a danger and it is just for that reason that at first the bringing in of foreign workers had been renounced. It was but when the needs demanded the deployment of foreign workers, that the nee of security had to be satisfied simultaneously. What measures are to be tal depends upon the danger, which is different according to the attitude of the alien. Whereas the measures of policing were imperceptible with regard to t French, the eastern workers were, in the beginning, kept locked in camps.

The natural interest of the state goes in the direction of attaining security by winning the aliens over inwardly because their collaboration is desired. By depriving them of their freedom this is not to be achieved. As long as the attitude of the alien can not be clearly recognized, especial if he be -- as the citizen of the Soviet-Union is-schooled propagandistical more severe control may be necessary. But it should not develop into a permanent captivity, and should at most correspond to a sort of quarantine. To deprive people without guilt of their liberty for an extended period is not admissible, because it would correspond to a forbidden collective punish ment. The mere assumption of danger is not sufficient for the decreasing of such limitations; there must be, besides, acts which show that these foreig workers appear dangerous also under normal working conditions. The keeping in custody of eastern workers behind barbed wire and without permission to out for walks as ordered by Himmler, is to be regarded as an ill-treatment, if it is permanent.

The defendant Sauckel, guided by the feeling, that in this matter the limits of the permissible had been overstepped, immediately took steps agai this and, in a tough fight against Himmler, demanded and obtained the with-drawal of barbed wires and the prohibition to go out for walks, to be seen from the following decrees, that is, Document Sauckel 10, Exhibit USA-206.

Where, in spite of the set regulations, the old methods were applied b the police, Sauckel always intervened when he heard of such occurences. I has been confirmed repeatedly by witnesses, Exhibit Sauckel 10, the statem

H0183-0058

by the witness Goetz.

Another controversial point was the earmarking by the badge "OST" which was maintained until the year 1944 and was then replaced by a country insign This earmarking of the Eastern workers who could move freely among the popul tion was necessary for police security measures. This cannot be consi ered ill treatment. The rejection of this sign by the Eastern workers was based the first place on the defamation of this badge by propaganda, and the defen ant Sauckel always tried to change this insignia and to replace it by a nationality insignia as the other workers wore it voluntarily. He finally prevailed here also against Himmler, successfully, Document RF-81', page 12.

There must on principle also be equality between own and foreign worker with regard to the rules concerning maintenance of discipline.

With all belligerent states the war has raised the same problem as how t deal with such workers who do not live up to their duty of work; that means slackers, shirkers and saboteurs. The practice of discharge, common in peac time, is ineffective during war; but deserters from work cannot be tolerated today by any belligerent. In cases amounting to sabotage, police and penal measures had therefore to be taken, the most important of which was the shor transfer to a labor camp; in special extreme cases imprisonment in a con-contration camp was inflicted.

The document 1063-PS/RF-345 shows the similarity in the execution of th regulations towards Germans and Foreigners.

Such police measures which are caused by the disloyal conduct of the worker are justified measures. The Wartburg document RF-810 show in the rep of the reporting official Dr. Sturm that such measures were carried out in a very moderate manner, and that only 0.1 to 0.2 per thousand were thus punish

Hence it follows that issuing of regulations concerning the maintenance of discipline is in itself not yet an "ill treatment" which could be the bas for a crime against humanity.

Such an ill treatment however can consist of excesses which occured out side the competence of the defendant Sauckel. He can only be held responsib for those if the subjective facts of the case are fulfilled, and if he knew

H0183 - 0059

of such excesses and approved of them although he could have prevented them.

In summing up one can say that the "regulated utilization of labor" is permissible in international law and that restrictions imposed on workers within the limits of necessities must be permitted for reasons of state security.

On the other hand, excesses in carrying out the regulations have to be regarded as ill treatment and could mean crimes against humanity. For those he is responsible who has instigated them or who, within the sphere of his competence, did not prevent them.

H0183-0060

Should the extensive scale of the charges brought against defendant Sauckel proceed from the above stated legal considerations, it is necessary first of all to single out those fields in which the evidence reveals him to be absolutely clear of any responsibility.

In the first place, it is not proved that defendant Sauckel can be connected with the biological extermination of the population. His whole interest in fact has proved to have been just the opposite, since his purpose was to obtain people as laborers. With the migration measures and methods used in this respect, he had nothing to do.

Work in concentration camps was just as far removed from defendant Sauckel's responsibility. Himmler's Posen speech in October 1943 (Document 1919 PS, page 21) reveals that the SS had erected gigantic armament plants of their own. We know that Himmler covered his extensive labor requirements by despotic, arbitrary arrest of persons in occupied territories. In Germany itself, he had workers engaged in regular employment arrested on insignificant pretexts and brought into concentration camps fraudulently vis-a-vis the regular labor offices. This is clearly shown in Document 1063 PS, that is a letter dated 17 December 1942 as well as a letter dated 25 June 1943, in which alone a requirement of 35,000 prisoners is signified. Moreover, any correspondence exchanged with reference to concentration camp labor never passes through Sauckel's services. As an example, I refer to Document 1584 PS containing some correspondence with Himmler's Department. Defendant Sauckel's name is never mentioned with reference to a conscription of prisoners, and the witnesses have unanimously stated that defendant Sauckel had no connection with these matters. This is also confirmed by the statement of the Director of the Ministry Armament's Labor Office. Schmelter, who received the required prisoners direct from Himmler.

Another subject which must be cleared is the conscription of Jews for labor. This labor conscription is a part of labor con-

H0183-0061

scription of concentration camp prisoners; it was Himmler's own personal secret kingdom. This is revealed, for instance by Document R 91 in which Himmler's service orders the arrest of 45,000 Jews in the "Jewish Sector" as concentration camp prisoners.

By the production of a document, L 61, the Prosecution has attempted to convict Sauckel of a share of guilt in this department This document is a letter dated 26 November 1942 from Sauckel's office to the President of the National Labor Office, to the effect that, in agreement with the Chief of the Security Police and Security Department, Jewish workers remaining in the plants must be withdrawn and evacuated to Poland. As a matter of fact, this letter actually confirms that Sauckel had nothing to do with Jewish labor in the concentration camps, since Jewish workers were actually withdrawn from his department under the false pretence of evacuation. The measure is indeed solely concerned with the purely technical purpose of releasing the Jewish laborers and replacing them by Poles, an operation which could not have been carried out without the participation of Sauckel's office.

This letter is the sequel to a correspondence which can be traced back to the period prior to Sauckel's assumption of office, and Document L 156 is subsequently concerned with the same technical operation. The unimportant character of the matter is attested by the fact that these letters were not composed at defendant Sauckel's headquarters in the "Thueringenhaus" but in an auxiliary office in the Saarlandstrasse. Defendant Sauckel disclaims knowledge of these operations and points out that the letters do not bear his original signature but were, according to the routine of his service, made out in his name precisely because they were of minor importance. The fact that the letters begin with the routine business term of "in agreement with", and not "in accordance with" (the orders of) the Chief of Police SP and SD, does not mean that they refer to a connivence but merely to orders received from the authoritative headquarters.

H0183-0062

Next, reference has been made to extermination by labor. But Documents 682 PS dated September 1942 unmistakably show that a secret manoeuvre of Himmler and Goebbels in cooperation with Reich Minister of Justice Thierack is here involved. Defendant Sauckel is not concerned.

Neither was the conscription of workers in the framework of the Organization Todt under Sauckel's responsibility. The

H0183-0063

accusations proceeding from document UK-58 in this respect, bearing upon labor conscription methods in the Channel Islands, do not therefore concern him. The documents do not show that defendant Sauckel was aware of these proceedings or that he could have prevented them.

This separation between defendant Sauckel's labor jurisdiction and the organization Todt is confirmed in Document L-191, i.e., the report of the International Labor Office inMontreal.

A special department is the apprehension of labor forces by civil and military departments. This was to a certain extent run as brutal conscription and kept secret from defendant Sauckel because he opposed it and wished to prevent it by every means. To a certain extent his objections were dismissed by higher authority.

Under this category comes the labor conscription by the SS, Railway, Air Force Building Batallions, Speer's Transport and Traffic Units, Fortification and Engineering staffs and other services.

The exclusion of these contingencies from the scale of accusations must especially exculpate Sauckel, since in these cases Sauckel's orders were not authoritative.

Document 204-PS illustrates in this respect the circumstances in which transport assistants were procured in White Russia.

Document 334-PS shows the same with regard to the execution of an independent drive for Air Force Assistants, which can cast no guilt upon Sauckel. The commitment of adolescents, which is known as "Heuaktion" under document 031-PS of 14 June 1944 as a point of the charge, lies outside of Sauckel's jurisdiction and activities, as it is shown specifically by this document. The IXth Army together with the East Ministry were the originators.

A letter of the co-defendant Rosenberg to Reich Minister Lammers of 20 July 1944 (document 345-PS) refers falsely to the consent of the General Plenipotentiary for Labor Commit ment; it states, however, that the defendant Sauckel was not connected with an SS-Helper Action and that he refused cooperation in this affair.

H0183-0064

According to this, as stated by document 1137-PS of 19 October 1944, an individual office in the Rosenberg Ministry takes care of the seizure youth and accomplishes the task with its own personnel. Excluding the defendant Sauckel's agency, labor is supplied directly here to the armament industry.

Circumventing defendant Sauckel's agency, measures also took place which Hitler induced directly by orders to the local offices of the Wehrmacht and of the Civil Administration; it was so, for the labor commitment ordered in the occupied territories for the fortification of the Crimea; this is shown by document UK-68.

The seizure of labor in Holland which was carried out by the Wehrmacht under protest of the labor service offices, is another one of these cases; this is shown in document 3003-PS, in Lt. Haupt's report and the defendant Seyss-Inquart has confirmed it.

An important subject, which is beyond the defendant Sauckel's responsibility, refers to all the actions executed as punitive measures against partisans and resistance groups. These are independent measures of the police; I already spoke about their judicial evaluation. Whether they were admissible and could be approved, depends on the circumstances. For example, measures against the resistance movement in France as described in document UK-78 (French Government Report) are excluded here. Therefore, a direct responsibility of defendant Sauckel ceases to exist.

Therefore, the very incriminating events which are enumerated in count III, paragraph VIII of the Indictment under deportation, the destinations of which were the concentration camps, are not within the responsibility of the defendant Sauckel.

Furthermore, the deportations for political and racial reasons which also end under VIII B of the Indictment as the deportation of Frenchmen into concentration camps, are also not within the responsibility of the defendant Sauckel. Furthermore, the resettlements of Slovenes and Yugoslavs described under B (2), also must be excluded.

According to the Indictment, under VIII, H 2, only a part of the additionally mentioned approximate 5 million Soviet citizens are mentioned as having been seized by labor commitment, the others were removed by other means to

H0183-0065

which the regulations of the defendant Sauckel did not apply. This separation is not of importance on account of the number of people, but because the presumed bad conditions could have taken place just in that sector, since greater danger of improper treatment existed there.

THE PRESIDENT: Would that be a convenient time to break off?

(A recess was taken.)

H0183-0066

The prisoners of war also are exempted from the field of responsibility of the defendant Sauckel. These labor forces did not have to be conscripted but were only directed.

This was done by means of special labor offices, which were separated from the other procedure with the prisoner camps and collaborated exclusively with the armed forces. The task consisted only of using the prisoners of war where they were needed.

The defendant Sauckel could only request the transfer of the prisoners of war. Such a possibility is referred to by the Prosecution document 1296-PS of 27 July 1943, which refers under III to the increase in the use of prisoners of war in collaboration with the Army High Command.

The assignment of prisoners of war to plants took place only under the supervision of the Wehrmacht. The Wehrmacht controlled compliance with the Geneva Convention. Sauckel is not in any way connected with the death of hundreds of thousands of prisoners of war of the Soviet Union in 1941 of whom Himmler speaks in his Posnania speech, 1919-PS, and for whose replacement workers had to be brought in.

If, in spite of this, in Document USSR-415, -- the official Soviet report about the Lamsdorf Camp -- the defendant Sauckel is connected with the claimed ill treatment of prisoners, then this is done only on the basis of the claim that the number of personnel in the camp was reported to him in a purely businesslike manner. The charge cannot be maintained. The document at that does not contain a sufficient listing of time after the year 1941.

The defendant Sauckel, although he personally was not responsible, intervened in excess of his official duties for the care of the prisoners of war because he was interested in their willingness to work. He issued general decrees. In this way Document Sauckel 36 shows that he demanded sufficient subsistence, and Document 39 shows that he demanded the same working hours as for German workers; he also pointed out here the prohibition of disciplinary punishment by the plants.

A further separation of the accusations raised must be made after the time of the incidents. The defendant Sauckel took over his office only on 21 March 1942. His measures, therefore, could have had an effect only some time later.

H0183-0067

How conditions were previous to that can be seen from some documents from the year 1941. In Document 1206-PS, subsistence through horse and cat-meat is suggested by leading authorities, and in Document USSR-177 the production of bread of a very inferior quality is suggested. Just a short time before the defendant Sauckel's taking office, Himmler in a sharp decree orders the confinement of the workers behind barbed wire. It can be said that a low point in the treatment of the foreign workers, who at that time were in the Reich had been reached. The idea which one has of the simplicity and the efficiency of the Russians is tragic.

With the taking over of office of the defendant Sauckel, a fundamental change has taken place here, which led to a constantly increasing improvement of the situation. The credit for having established a change here falls, according to the following documents, solely to the defendant Sauckel. This is shown in particular by Document EC-318, which represents a record of 15 April 1942 about the first meeting of the defendant Sauckel with Reich Minister Seldte and his specialist staff on the occasion of his taking office. It has been recorded there that it was the defendant Sauckel who made the taking over of his office dependent on the condition that the subsistence of the foreigners must be the same as for the Germans and that the fulfillment of his demand was assured him by Hitler, Goering, the Food Minister Darre, and his Secretary of State, Backe. It furthermore has been recorded there that the defendant Sauckel demanded the removal of the barbed wire and succeeded in this, and finally that he immediately took steps against the low wages of the Eastern workers.

The execution of his fundamental demands was then also immediately employed by the defendant Sauckel and followed through with tenacity against the resistance of all authorities.

The Program of the labor-commitment of 20 April 1942 -- Document 016-PS -- accordingly takes immediate steps against cruelties and chicaneries and demands that foreign workers be humanely treated; the hope is even expressed that a propaganda effect must surely achieved by the way in which the labor-commitment was carried out. This thought was frequently reiterated later.

An economical commitment of workers was required in order to counteract

H0183-0068

the waste which was occurring on the part of influential agencies.

A year later, on 20 April 1943 the defendant Sauckel again addressed a declaration of program to all persons concerned in labor-commitment. This is the repeatedly mentioned "Manifest of Labor Commitment", Sauckel Document No. 84, which was issued as a warning and a call to battle, addressed to all agencies which opposed the serious responsibility of the defendant Sauckel. Goebbels opposed it under the pretence that the title was too assuming and the propaganda feature of the document essentially too weak. Other agencies just disregarded the copies sent to them and did not forward them, whereupon copies were sent directly to the industries concerned. How this message was handled by the reluctant agencies is shown by its description "notorious manifesto" which was unanimously adopted for it in a session of the Central Planning Board on 1 March 1944, Document R-124, page 1779a.

Defendant Sauckel was reproached for having been "too good". I refer to a remark made by General Milch who was interrogated before the Tribunal, in whichhe refers to theCentral Planning Board and criticizes the ostensibly too lenient treatment of loafers and declares that if anything was undertaken against them, agencies were immediately to be found in Germany which would protect the poor man and would intercede for the human rights of others. This is Document R-124, 53 Session, Page 1913.

The attitude of defendant Sauckel was generally known and has been confirmed by various documents; thus agencies addressed him because of complaints and deficiencies, not in order to make the defendant Sauckel responsible for them but to solicit his help, because everybody knew how seriously and eagerly he advocated improvements.

Thus Document 1'4-PS, which is a report of Dr. Gutkelch of the Central Agency for Eastern People of the Rosenberg Ministry dated 30 September 1942, emphasizes in various parts the influence of defendant Sauckel and recommends getting into closer touch with him.

Co-defendant Rosenberg also is pointing at Sauckel's strenuous efforts in Document 194-PS, page 6, a letter of 14 December 1942 to Koch, Reich Commissioner for the Ukraine.

H0183-0069

Co-defendant Frank likewise on 21 November 1943 asked defendant Sauckel in Document 908-PS for a basic change of the legal position of Poles inside the Reich.

To what extent do real events correspond with that which has been stated?

The first question to be dealt with is seizure, which is practically identical with deportation.

It is connected with the examination of the treatment of workers which is designed by the words "slave labor".

The evidence has refuted the error according to which defendant Sauckel on his own responsibility carried out the commitment and seizure of foreign workers through his own organization. It has been established that the supreme agencies of the occupied territories executed the laws regarding compulsory work, which they had received on Hitler's orders. All these agencies had their own administrative system and guarded their departments against the intrusion of others.

A communication of the Rosenberg Ministry of theEast to Koch the Reich Commissioner for the Ukraine, dated 14 December 1942, Document 194-PS, page 71, in which co-defendant Rosenberg particularly refers to the prevailing right of sovereignty questions of Labor commitment, proves that this administrative system had not broken through. These supreme agencies had their own labor offices, which were organized in detail from the Ministry down to the local office. See Document 3012-PS. Ordinance of the Supreme Command of the Army dealing with compulsory work in operationalsector East of 6 February 1943. Document RF-15, Ordinance of 6 October 1942.

Only with these agencies could defendant Sauckel place requests for the number of workers he was ordered to send to Germany and only with them give departmental instructions. These were his limitations and he never went beyond them. He took note of the right of execution, as opposed to the right of instruction. For this task a deputy was appointed for each territory, who in accordance with the ordinance of September 1942, USA Exhibit 510, was directly subordinate to defendant Sauckel but did not belong to his agency, as he belonged to the territorial agencies. This was

H0183-0070

expressly confirmed by the witness Dail who had been appointed by co-defendant Rosenberg expressly for the most important deputy in the East, the Reich Councillor Peukert, who belonged to the Staff of the Ministry of the Ministry East.

This Reich Councillor Peukert was at the same time consultant for the Economic Staff East of the rear Army Territory, which was close to the field of the civil administration; in addition to his duties he acted as deputy of the defendant Sauckel in the Personnel Union. This is proved by Document 3012-PS, which is a note on this document dealing with a conversation of 10 March 1943 concerning labor commitment, in which the position of Peukert is noted in the membership list. By this Personnel Union, created in the interest of the territorial authorities, all unauthorized interference of defendant Sauckel was made impossible.

H0183 - 0071

When co-defendant Rosenberg complains about the methods of labor mobilization in the East as per document 018-PS, that is in the letter to defendant Sauckel dated 21 December 1942, this is to be considered as the complaint of a minister who does not consider himself in a position to be successful against his subordinate, and thus addresses the presumable source of the difficulties which had been made for him.

It is true that these difficulties could be removed immediately when defendant Sauckel would desist from the execution of his order. But execution was just his job, which according to the decree of appointment, had to be executed under all circumstances, especially against just such opposition as occurred here on the part of co-defendant Rosenberg.

Defendant Sauckel had to fight against opposition arising from weakness and from departmental egotism, and had to see to it that local agencies would not fail to supply the required manpower due to need for rest, or that other offices would hold it back from selfish interests. "With all means" and "ruthless" are recurring expressions which are employed in the fight against these aspects.

General Falkenhausen, the Military Commander in Belgium and Norther France, during his hearing mistakenly declared in document RF-15 that defendant Sauckel forced him to execute the commitment of labor and accomplished it through his own organization. But he had to admit that this opinion was incorrect when the order signed by him about the introduction of compulsory labor service was put before hi

This presentation is confirmed by the statements of the witness Timm and Stothfang.

In France seizure was made by the French administration. The German office above it was not the office of defendant Sauckel but of the Military Commander in France, where Sauckel had only a deputy.

The negotiations which defendant Sauckel conducted in Paris and which were the subject of the evidence lie outside of this activity; they are negotiations of a diplomatic nature between the German and French Governments in which Sauckel participated. They were held in the German Embassy.

Circumstances in the other spheres were accordingly.

Also the Recruiting-Commissions which corresponded to the labor commitment staffs in the rear army districts and in operational districts, were by no means

H0183-0072

offices of the defendant Sauckel, as co-defendant Rosenberg assumes. These recruiting commissions stood nearer to defendant Sauckel only because they were composed of experts who came from the German labor offices, which belonged to Sauckel's Department, They received specialized directives only through their superior office in order to Guarantee a uniform handling of all recruiting regulations. Regulation No 4 in Sauckel document No 15 is authoritative on this point.

This stipulation already issued on 7 May 1942, namely before the nomination of the deputies on 30 September 1942, provides for the sole responsibility of the military and civil authorities of the occupied territories. The deputies mentioned there to whom were assigned the same functions, are the deputies at the German missions in friendly foreign countries.

This was misunderstood by the Prosecution and therefore wrong conclusions were arrived at to the disadvantage of the defendant Sauckel about the responsibility for recruiting and transport. Also the interpretation of the provision that "all technical and administrative procedures of the Labor Commitment were exclusivley within the competence and responsibilty" of defendant Sauckel is incorrect for the occupied territory.

This stipulation refers solely to the functions in the Reich and lays the basis for the competence of the General Plenipotentiary for labor commitment, of the district labor offices and labor offices; this can be seen from document 016-Ps (last paragraph).

H0183 - 0073

The defendant Sauckel, therefore is not directly responsible for the seizure. Indirectly, however, responsibility can be charged to him in that he was aware of these bad conditions and knew that they could not be stopped, but nevertheless demanded more workers.

To this the following must be said : In the defendant Rosenberg's letter of 21 December 1942 (document 018-PS) the defendant Sauckel learned for the first time of the recruiting methods which were designated as mass deportation. At the meeting which followed this in the beginning of January 1943, the defendant Rosenberg declared that he was opposed to this and that he would not tolerate such procedures. This is also confirmed by his previous letter of 14 December 1942 adressed toKoch , Reich Commissioner for the Ukraine (document 194-PS) , in which he clearly calls the latter's attention to his obligations to proceed legally.

Koch's memorandum of 16 March 1943 (document Ro 13), of which the defendant Sauckel did not learn until here at the trial, gives an explanation, according to which these incidents are said to be exaggerated individual cases, the justification of which is based on the need for measures to be carried out for the restoration of the authority of the occupation officials. It is expressly declared in this that the recruitment of workers is to proceed with legal means and that steps will be taken in the event of arbitrary measures. (document No. Ro 13, Page 11 and 12).

It did not seem out of the question that it might have been a matter of propagandistic exaggerations and activities, to which Koch particularely refers. In war such a possibility is likely, and the propagandistic style of the Molotov report (document USSR - 151), only emphasizes this.

The defendant Sauckel was also supported in this idea as the result of a " Manhunt " investigation which was reported to him at Minsk by Field Marshal General Kluge; it had led to the explanation that it had involved the assembling of workers em-

H0183-0074

ployed by a labor firm at the time of the retreat.

The Katyn case shows how difficult it is to clarify such events according to the truth when they are made use of propagandisticall as combat measures.

As the witnesses from the defendant Sauckel's office have confirmed, no other incidents involving these abuses have become known. The cases which were reported are notoriously, in part, repetitions of the same happenings, which were reported from different sides.

All these reports, however, do not show an edeavor to approve such things, but are a sort of house alarm for the purpose of remedying and improving them.

Can one believe defendant Sauckel when he declares that he did not know about the conditons alleged by the Prosecution ?

What reached him through official channels cannot be considered as proof of cognizance, and the witnesses confirm that the so-called methods were unknown.

But we have here documents of the authorities of the occupied countries, from which it appears, that the Reich Commissioner in the Ukraine ordered the burning down of houses as a measure of combat restistance against the administration, and there are orders foreseeing such measures. Reports made to the Ministry of the East regarding such events do not lead to penal prosecution, but to the suspension of the procedure, e.g. the Raab case (document 254-PS) and the Mueller case (document 290-PS)

In contradiction to this uncertainty the following must be stated The measures emplozed were not accepted by the highest instances, but were secretly made use of by the lower instances. From the preliminary proceedings of the Raab and Mueller cases, it definitely appears that the existing regulations were unknown at the Ministry.

Defendant Sauckel has travelled through the Ukraine, but he was not told just that which might have got the local offices into trouble. The views of defendant Sauckel were well known, and on the other hand ther existed a violent quarrel between the offices of the Reich Commissioner Koch and the Reich Ministry Rosenberg. When the cocuments of both offices which have been submitted are read it can be seen from the file notes that in this battle both sides had collected arguments and that nobody wished to commit himself.

Since the defendant Sauckel Himself had not direct authority, it i understandable that the actual conditions remained unknown to him.

Another point of view has to be considered as well : various documents mention that a certain pressure had to be applied in the procurement of workers, and that the workers had to be obtained " under all circumstances ".

Does this give a free hand for all methods ?

One must see what was actually done in pursuance to these statemen

The OKH in one case then ordered the increased conscription of workers, and permitted collective seizures, but prohibited collective punishments in connection with this. On this connection see document 3012 -PS with telephone message of the Economy Staff East to General Stape of 11 March 1943.

The best picture is shown here in the same document 3012-PS by a remark in the files concerning a discussion of 10 March 1943. Here General Nagel requests clear guiding principles and State Councillor Pauckert wants " reasonable " recruitment methods established by the OKH as the authorized agency. Document 2280-PS is also relevant here, which showe the only personal statement of the defendant Sauckel concerning this question and which was made in Riga on 3 May 1943. There he states that only " all permissible means " are allowed.

Document 3010 -PS is also to be quoted, Economy Inspection South,

H0183 - 0075

in which on 17 August 1943 the use of "all suitable means" is permitted.

Orders are issued which contain severe measures against non-compli: ce with the duty of compulsory labor : deprivation of food and clothing cards. Imprisoment of relatives is threatened, and the taking of hostages held out as a prospect.

How about the admissibility of such measures ?

The deprivation of food cards has today become a generally used means of coercion which is based on the rationing system, and which has its cause in the conditions of time. It can be handled easily and does not require any special executive force: on the other hand, it is extremely effective.

Concerning the imprisonment of relatives , severe inroads into individual responsibility can be recorded even today. The Hague Convention of Land Warfare protects only against the collective punishment of the population, bit it does not protect the members of the family who may be considered as sharing the responsibility in the case of a refusal to work. The French law of 11 June 1943 which was presented as document RF -80 also provides for such responsibility only in the case of deliberate cooperation.

There finally remains the " shooting of a prefect " which the defendant Sauckel demanded. Apart from the fact that this statement as such is irrelevant from the point of view of criminal law,

H0183-0076

H0183 - 0077

because it was not actually carried out, its legal meaning is merely a demand to apply the existing French law. This law has been submitted by the Prosecution as document RF-25; decree of 31 January 1943 by the military commander in France; article 2 of which provides for the death penalty.

Also misunderstood by the Prosecution is a statement uttered by the defendant SAUCKEL, according to which one must handcuff the workers in a polite way. (Document RF- 86, page, 10, discussion by Sauckel in Paris of 27 August 1943.) But as appears from the context, what is in qustion here is only a comparison of the clumsy appearance of the police with the obliging manner of the French, without handcuffing being especially praised as a method of seizure: Prussian, clean, correct on the one hand but at the same time obliging and polite on the other hand, that is how one should work.

I refer again to the case of the proposal for " shanghaiing" in document R-124, page 1770, which is known to the Tribunal from the proceedings. The statement which the defendant Sauckel has made gives an understandable explanation; according to it, from a legal point it was a question of a preliminary recruitment which was supposed to make the workers inclined to agree to the real obligation later on in the official recruitment offices.

These various incidents shooting of a prefect, handcuffing, and shanghaiing may be; but one can reach a complete understanding of the subjective side only if one considers why these statements were made, and from what conditions they oroginated.

The background of all these statements is the struggle against resistance and sabotage which in France took stronger and stronger forms. Therefore, it is not a question of remarks of brutality andcynicism, but statements which were intended to counteract the indecision of the authorities.

Another thought which has to be added here is, whether the defendant Sauckel had not exhausted the manpower of the country by his measures to such an extent that more workers could only be obtained by inhuman methods and that the defend: Sauckel must have known this.

The important thing here is the figure of the "quotas". It has been established that they were high, but it has also been established that they were not laid down arbitrarily, but only after a careful study by the statistical department.

H0183-0078

Only a small percentage of the population was actual seized, and it was not the impossibility of performance that was decisive, but rather the will to resist. In the occupied territories of the East there were large reserves of manpower, available especially among grown - up young people, who were not appropriately utilized. The German troops, their ranks seriously thinned, saw the richly populated villages, during their retreat, and felt the same forces shortly afterwards as a reinforcement to the enemy's fighting power.

In France there were likewise many forces which placed themselves under the protection of the Maquis or the protected plants. This is not only confirmed by the French government report - RF - 22[illegible], but is also appears froma remark whic[illegible] Kehrl, as witness for the co-defendant Speer, made in the Central Planning on 1 March 1944 (Document R - 124, page 66). There this witness states that workers are available to an extensive degree in France.

Especially conclusive here is also document 1764-PS (Page 6). i.e. the report of Ambassador Hemmen of 15 February 1944 which deals with the "Reconstruction Program" of Marshal Petain, and which refers to the population as untouched by the war which increased by 300,000 young men every year.

If the number of the seized workers is of importance in this connection, it must be compared with the total population figures, and, on the other hand, it must be taken into consideration that Germany did not demand anything which she did not ask of herself to an even higher degree.

The defendant Sauckel had to be convinced, not, that people were unable to perform but that they did not want to perform.

In order to influence this desire, the Propaganda struggle and the competition of threats of punishment was created by both parties, and this first brought the population of the occupied territories into a state of moral conflict, which became the undoing of many.

The defendant Sauckel could with good reason refer to the consequence of the counter propaganda anf the deteriorated war situation as cause for the necessity to use coercion; he could, however, on the basis of the evidence wo which he had access, not fail to be convinced that the exhaustion of the countries was so great that nothing more could be extracted from them without the use of inhuman methods. The defendant Sauckelbelieved he could obtain his object, not by using violence but rather by special working conditions.

H0183-0079

As example, I refer to the promise which Sauckel himself gave on 3 May 1943 in Riga) Document 2228-PS).

Apart from this there is still another field of labor procurement which must be put in a different category. This is the liberation of Prisoner of War in order to make labor forces available for Germany by " releve" or "transformation."

The French governmental report RF-22 declares both methods of recruiting labor forces as inadmissible.

It is pointed out in the report that the exchange on the basis of " releve" is equal to the enslavement of about triple the number of French workers.

Against this it must be stated that the replacement workers came at times only for half a year for voluntary work and in succession. After a year and a half all the workers were free; the prisoner was free immediately.

Coercion for the execution of the "releve" did not exist. The offer of release is not legally assailable. Captivity can be terminated any time; Release can also be made subject to a condition. The French report overdoes the moral indignation by quoting a phrase of the President of the News Agency of the United States; this phrase speaks of the " abominable choice" of either to work for the hereditary enemy or to rob a son of his country of the possibilit of release from captivity."

The refute this, I refer to the healthy sentiment according to which in the older Russian literature such a change was praised as a patriotic and magnanimous deed on the occasion of the Northern War. Neither the King of Sweden nor Peter the Great have therefore considered the exchange as replacement by a substitute slave.

The "Erleichterte Statut" (Transformation") is contained in document Sauckel No. 101. It is the release of a Frenchman form captivity against the acceptance of other work, under the consition that a further French worker would come to Germany according to the " releve" regulations

H0183-0080

No prisoner of war was forced to change his legal position, but whole camps volunteered for it. If a prisoner made use of the possibility offered, he forfited thereby the juridical special labor protection of the Geneva Convention; but this was done in agreement with his Gonvernment. This does not constitute a violation of International Law.

The furlough home connected with the change over was ruined by the fact that the people who were granted those furloughs did not return, already after the first convoys. The French report RF-22 itself states on Page 69, that of the 8,000 people of one leave convoy, 2,000 did not return.

The report states, that the "unfortunate people" were placed before the alternative:"Either you return, or your brothers must die." This consideration, however did not impress them. Their promise could also not prevent them immediately joining the Maquis.

The abolition of these furloughs home does not therefore constitute an arbitrary act in slave labor. The reading of the French report can only increase this impression.

It follows therefore that in this special field also, no seizure of workers which violates the laws of war or which were carried out in an inhuman manner, has been effected by the defendant Sauckel.

I now come to the question: treatment of the workers.

In order to facilitate a proper judgment, a separation of the fields of responsibility is also made here.

The works manager was responsible for the general labour conditions in the works.

The general conditions of life outside the works was the competence of the German Labour Front.

These spheres of responsibility become conspicuous through the fact that two special representatives for them are mentioned in the indictment, namely Krupp and Dr. Ley

The defendant Sauckel can be held responsible for the incidents in these spheres only in so far as they are due to his decrees, or as, contrary to his duty, he did not intervene by direct supervision.

H0183-0081

The defendant Sauckel was directly responsible for the wages. Already on enterin office, he found a schedule of wages which he could not alter on his own responsibility; to do this he had to apply for the authorization of his superior office which was the Four Year Plan and for the consent of the competent Reich Minister.

The legal regulations summed up in Chapter "Wages question" of my Document Book II show that the basic decrees are not issued by the defendant Sauckel, but by the Cabinet Council for the Defense of the Reich (see Document Sauckel No.50,17 and 58) or by the Reich Minister of Economics (Document No.51) and the Reich Minister of Finance (Document Sauckel No.52)

The defendant Sauckel could schedule wages and fix piece-wages only within this framework fixed for him, in so doing he had to consider the interests of the Ministries in question.

So far as it was really possible for the defendant Sauckel to do so, he made amelioration possible; thus a series of his decrees shwo that he granted favours such as premiums, compensatory payments and similar favours (compare Document SAUCKEL No. 54 and 58a)

The defendant Sauckel's activity, however, aims on the whole at increasing wages by influencing the competent authorities. This is shown in Document 021-PS of 2.4.1943. Therein we find as appendix at treatise with statistical material to the proposition of a basic improvement of wages for Eastern worker.

It thus results from a study of the wages sheets from differents periods, that the average wages of Eastern workers have been raised several times during defendant Sauckel's term of office.

It was for the defendant Sauckel to regulate the working hours, but within the framework of the superior competence of the Reich Minister of Labour Seldte. This is shown by Document Sauckel No.67, where Seldte regulates the workung hour for Eastern workers in Par.3 of the decree of 25.1.44.

The working hours were on principle the same as for the German workers, corresponding to the tempo of the work in the factories.

This is also admitted by the French governement report UK-78-3; the cases enumerated there on page 580 of excessive working hoorus are contrary to the orders of the defendant Sauckel .

H0183 - 0082

Since they do not contain any dates of years, it cannot be recognized, if they deal only with temporary measures or with permanent conditions. The same lack of clarity exists in the French report RF-22, Page 101; there the minimum working time has been listed as 72 hours, which was increased to 100 hours. This could deal with the work of concentration-camp inmates, which has been left abstruse and unclear.

The settlement of the working hours was then changed by Goebbels, who on the basis of his plenipotentiary powers for the waging of total war introduced the 10-hour day for Germans and foreigner, although in practice this could not have been carried out generally. An unreasonably high working-time cannot be maintained and leads to setbacks.

I should like to add that Sauckel was responsible for the fact that these extra hours were paid for, or compensated for, along the line of overtime work.

Special attention has been paid by the Prosecution to the regulation of the working hours of female domestic workers from the East, of whom in the place of the 400, 000-500,000 girls originally demanded by Hitler, only 13,000 came to Germany.

The Prosecution has presented the memorandum for the employment of these female domestic workers as Document USSR-383. There it is stated under No.9, that a demand for time-off does not exist. The purpose of the regulation was to leave the settlement of the time

H0183 - 0083

off to the household according to its requirements. Another idea of the regulation is also hardly imaginable, because after all it was intended to accept these female domestic workers in particular into the families, and to give them the opportunity to remain in Germany. They had been selected as girls who were considered particularly dependable, who had reported voluntarily for domestic work. In accordance to the general practice the order was amended by a subsequent decree (in Document Sauckel No.26) simultaneously with the rescinding of all remaining limitations.

The regulation of the working-hours for children took place within the field of German Labor Security-Legislation. In this case it deals with children who, contrary to the decrees of the defendant Sauckel, had come to Germany with their parents in an unregulated manner.

Their work can deal with agricultural occupations only, as it is also practiced for German children. In this respect it is pointed out, that during the war, the school-children in Germany from their 10th year upward could be utilized for work, according to the decree of the Reich Youth Leader of 11 April 1942 (Document Sauckel No. 67a)

A summarizing discussion by Dr. Blumensaat in the complete Document Sauckel No. 89 gives the best information about the whole complex of wages and working-hours, as it was finally regula by law.

This immediate responsibility alone, however, cannot serve the defendant Sauckel as an excuse, if he knew and tolerated those things which, according to the Prosecution's assertion, branded the transportation and the life in the camps and factories. It is his duty to superintend, even there where he is not directly responsibl Such a sphere of activity, which consisting in the accommodation and feeding of the workers was the responsibility of the works.

As regards the fitting up of the camps for foreigners, the same regulations as for the camps for German workers were applied, by virtue of decrees of the competent Reich Minister of Labor SELDT

(Document Sauckel Nos. 42, 43 and 44). It is indisputable that the accommodation suffered from war exigencies, in particular from the effects of air warfare. The abuses, however, were eliminated as far as possible. The condition of the foreign workers was not different here from that of the German civil population.

The food supply suffered from blockade and want of communications. The established rations, contrary to the notorious statements on th feeding of the Russians laid down according to the schedule of 24. November 1941 in Document USSR - 177, amounted to 2540 calories for the Soviet prisoners of war. A further schedule has been submitted with the Affidavit of the witness HAHN as Exhibit Sauckel No. 11. According to this the ration in the Krupp works amounted t 2.156 calories for the Eastern normal worker, 2.615 calories for th heavy workers, and supervision ensured their careful distribution. The Reich Food Ministry was responsible for the supply of food. Strong accusations have been brought in by the Prosecution with regard to both points. These, however, are only possible when the existing regulations have not been observed. It is quite likely tha mistakes have been made in this large sphere of activity in the course of years, but the general picture is not only composed of mistakes, whereon a judgment cannot be based. The actual conditions have not been clarified in this prodedure to the extent that one could say the abuses were so general and obvious that the defendant Sauckel must and did know them.

Contrary to the uncertain statements of the witness Dr. Jaeg is the affidavit of the witness HAHN which refutes them to a large extent. The affidavits of the witnesses Dr. Scharrmann and Dr. Voss (Exhibit Sauckel No. 17 and 18) confirm that no serious abuses existed in their spheres of activity.

H0183-0084

18. Juli-A-EF-20-1. Ahuna.

In addition to the obligation of the Works Managers, the German Labor Front had to care for the foreign workers (Document Sauckel 15.) Its field of activity was amongst other things transportation and the supervision of medical care, as well as general care. The extensive activity which this very large organization developed, has not been described in these proceedings. The basic principles of the German Labor Front can be seen from Document Sauckel No.27, which is a regulation of the German Labor Front regarding the status of foreign workers in the plants. The aim is emphasized as follows: Maintenance of the willingness to work by observing conditions of contracts, absolutely fair treat ment and comprehensive care and control.

The German Labor Front was also responsible for the carrying out of the transportation according to Regulation No. 4 (Document Sauckel No. 15). SAUCKEL' instructions are contained therein. This task includes transportation to their place of work. The witnesses Timm and Stothfang and Hildebrandt have testified about this field of activity and did not report anything about bad conditions.

The descriptions in the Molotov-Report (USSR-51) cannot refer to transporta which was carried out under coordinated direction, but only to so-called "wild" convoys. The same applies to convoys, the destination of which according to the indictment, were the concentration camps. The great extent to which the defendant SAUCKEL has occupied himself from the very beginning with transportat conditions, is particularly shown by Document 2241-PS submitted by the Prosecut It contains a decree where conscientious directives for the prevention of the utilization of unsuitable trains are given.

Mistakes have occured, especially the incident mentioned in Document 054-PS of the return transport of workers. These had been brought into the Reich before SAUCKEL's time in violation of his basic principles. This was a matter of a single incident, and the necessary orders were issued immediately. The return journey of sick persons in conditions which did not permit them to travel in convoys was prohibited, and Bad Frankenhausen was placed at their disposal. This was followed by the order regarding the accompanying of such transports by male and female assistants of the Red Cross (Document Sauckel No.99).

The carefully and thoroughly organized apparatus of medical care which worked under the collaboration of the Association of Panel Doctors, has not failed, in spite of the greatest difficulties. Rather the great result has been

H0183 - 0085

H0183-0086

established that no epidemics and serious diseases broke out.

The cases presented by the Prosecution from individual camps of the 60 camps of the Krupp firm, can only have arisen from the unusual chain of circumstances. They cannot prove generally bad conditions, of which these conditions could be typical.

Another Document, RF-91, has also been presented, i.e. the medical report of Dr. Fevier of the French Delegation of the German Labor Front, which was composed after the beginning of the invasion on 15 June 1944. Besides faults which it is intended to correct, the report also points out good things. It speaks with particular acknowledgement of leaders of youth-camps, of the systematic X-Ray examinations, and of the support given by the district administrations, and similar things. A real overall picture of conditions could only be obtained by the study of the medical reports of the Health Offices of the German Labor Front existing everywhere.

For the defense of the defendant Sauckel, the circumstance is only of importance here in that a distant onlooker like himself could not have a clear picture of bad conditions. The sanctioning of such bad conditions would have stood in gross contrast to the actions and declarations of Sauckel. The defendant Sauckel did not acquiesce if a Gauleiter perhaps said: "if somebody has to freeze, then first of all the Russians". He intervened here, and he stood out against it publicly in his official Handbook of the Commitment of Labor (Document Sauckel No. 19). The defendant Sauckel also tried to improve the food outside of his competence. This has been confirmed by several witnesses, amongst others the witness Goetz (Exhibit Sauckel No. 10). It is also shown by the record of the Central Planning Board (Document R-134, Page 1783). The defendant Sauckel did not let matters go on anyhow, but he established his own personal staff, whose members travelled around the camps and corrected bad conditions on the spot. He also attempted to obtain clothing, and let factories work to a large extent for supplying the Eastern workers. All Witnesses who have been heard regarding this problem have again and again unanimously confirmed the benevolent basic attitude of the defendant Sauckel.

I refer to the announcements and speeches of the defendant Sauckel, which always advocate good treatment. I do not wish to enumerate the documents in

detail, and only emphasize the "Manifeste of the Commitment of Labor, Document Sauckel No. 84, in which he refers to his binding basic principles, and demands that these be recalled constantly and with emphasis. I also refer to the speeches to the Presidents of the District Employment Offices of 24 August 1943 (Document Sauckel No. 86) and of 17 January 1944 (Document Sauckel No. 88). The defendant SAUCKEL finally obtained, that even Himmler, Goebbels and Bormann acknowledged his ideas as correct. This is shown by document 205-PS of 5 May 1943. This is a memorandum regarding the general basic principles for the treatment of foreign workers. There the basic principles of a regulated commitment of labor are accepted.

H0183-0087

H0183-0088

How do the statements of the Prosecution on the ill-treatment of workers as if they were slaves with this? It will be necessary to examine closely whether the cases referred to involve real abus affecting workers in the process of normal mobilization, or abuses involving the deportation of prisoners and prisoners' work. Then one should investigate exaggerations and delays which can be explained by human weakness and peculiarities. In my opinion no adequate clarification of incidents has so far been obtained. Press reports already began to appear, which are bound to strengthen doubts as to the traditional concept of how foreign workers live.

The Plan submitted with Sauckel Exhibit No. 33 portrays the numerous offices for checking and inspection, relative to the question of laborers. They did not report to the offices of the defendant Sauckel conditions of particular abuse. Perhaps the fact that offices were so numerous point to a weakness: it is quite possible that each Governmental Department kept silent about whatever mistakes originated under its own jurisdiction, rather than permitted their coming to the attention of the defendant Sauckel, because as a rule the controlling agencies were of a higher standing than that of the defendant Sauckel. This should particularly be considered with regard to relations between the mos important agency, the Deutsche Arbeitsfront (German Labor Front), under the leadership of Reich Leader Dr. Ley, and Gauleiter Sauckel.

On closer examination of the document submitted as 1913 PS, an agreement on the creation of "central inspection offices charged with the care and control of foreign labor", it appears to be a carefully set-up "screen" against the defendant Sauckel. The document was devised by Dr. Ley and signed on 2 June 1943, then submitt to the defendant Sauckel for signature. He did not approve and announce it until 20 September 1943. For that very reason it is quite likely that Dr. Ley did not wish to invite criticism. On the other hand, there is also little likelihood that the abuses were general and manifested themselves openly. Otherwise it would obviously have become known to the defendant Sauckel through his own control agencies.

H0183-0089

In addition to his own staff, the defendant Sauckel on 6 April 1942 appointed the Gauleiters as "Commissioners for the Mobilization of Labor", impressing upon them as their foremost duty the supervision needed for enforcement of his orders. This becomes apparent from Sauckel document No. 8, figure 5; the same holds true for document 633 PS of 14 March 1943. Several Gauleit were examined by the Tribunal as witnesses, and they have confir... that the supervision was carried out as ordered and that Sauckel checked it through members of his staff. No abuses were reported.

After due consideration of things, whom should one believe? Are we concerned here with exaggerated laments or do findings of a contrary nature deserve credit? There is no testimony by the French who, according to document UK 78/3, IIIrd study, were taken to the real slave centers; There is no testimony by the Russians who, according to document USSR 51, were sold for 10 to 15 Reichsmark.

In any case one fact speaks in favor of the defendant Sauckel namely the fact that workers were always confirmed by competent witnesses - and that when the collapse came no rising occurred in which the workers would have given vent to their natural wrath against the slave owners.

I have summarized actual happenings and have appraised them juridically. All this, however, must appear to be juridical trifle where a higher responsibility is concerned.

It has been voiced here that it will not do to let the insignificant Works' Managers take the blame, but that the moral responsibility must go to the highest Reich Government offices; of their own volition, they should have introduced corrections on a larger scale to cope with difficulties inherent in the circumstances of that time. This might be in order for offices which had the power and the means of alleviation. The defendant Sauckel and his small personal staff had merely been incorporated in a Ministry already in existence and he did not have such means at his disposal. His authority consisted of a narrowly circumscribed power to give directives on the mobilization of labor, and he has used it untiringly

H0183-0090

The Works Managers of the armament industry were formed into an independent administration, and outwardly separated from so-called bureaucrats. The duty of self-preservation corresponds to this administrative independence. Consequently, if the case arose that something should be done to improve the safety of foreign workers, of their situation in armaments works, it would have been the duty of such establishments and of the Armaments Ministry under whose supervision they operated to deal with the matter. It was not the duty of the office of the defendant Sauckel to intervene in these matters, as they were under the Armaments Ministry. This is clear evident from document 4006 PS with decree of 22 June 1944. This is borne out by the most intimate personal relation between the Armaments Minister and Hitler which made the former the most influential man in the economic sphere. If greater responsibility were to exist for mistakes made in the factories, such responsibility can be placed only where there is knowledge of such conditions and power to correct them.

There is still a question of law to be considered with regard to the indictment; namely, whether the position of the General Commissioner for Labor Commitment is determined by Article 7 or Article 8, i.e. whether the defendant Sauckel was an independent government official or whether he had to carry out orders. The recruitment of labor took place from time to time upon Hitler's special order, as part of the general program, and the subsequent distribution alone was left to Sauckel. This is also confirmed by the fact that defendant Sauckel always refers to Hitler's "Orders and Commands", as in the Manifest of the General Plenipotentiary for Labor Commitment (GBA) (Document Sauckel No. 83) and others. From this also derives the fact that defendant Sauckel from time to time specially reports execution of the orders, as well as the beginning and end of his official trips. (Document 556 PS of 10 January 44 and 28 July 43).

It is an argument against independence, that according to the nomination decree, the defendant Sauckel was immediately subordinat to the Four Year Plan and incorporated into the Reich Ministry for

H0183-0091

Labor which had been preserved with its State secretaries. Only two departments were placed at his disposal. If the kind of responsibility is to be determined, it can be only within the limits of Article 8 of the Charter. Herewith I conclude my exposition regarding the special sphere of activity of labor commitment.

H0183 - 0092

The defendant Sauckel is accused on all counts of the indictment over and beyond labor commitment. Particular isolated acts are, however, not charged against him as active agent. A closer characterisation of the accusation has been effected in the course of the proceedings only in regard t the concentration camps. In this connection, however, it has been proved by a sworn affidavit of witness Walkenhorst (Exhibit No.23) and a statement in lieu of oath of witness Dieter Sauckel (Exhibit No.9) that no order for the evacuation of the Buchenwald camp upon the approach of American troops was given. Knowledge and approval of conditions at the camp cannot be deduced from two visits of the camp before 1939, as the excesses submitted by the Prosecutio did not yet exist. Nor did the local proximity of the camp to the Gauleitung of the defendant Sauckel bring about any close connection with the SS staff, as it had its seat in Kassel and Magdeburg.

Finally must be added the inner human convictions of defendant Sauckel which resulted from his previous career, and which was irreconcileable with Himmler's point of view.

What part can defendant Sauckel have played in the conspiracy? He was Gauleiter in Thuringia and did not rise above the rest of the Gauleiter. His activities and his aims can be deduced from his fighting speeches, which have been submitted as document Sauckel No. 95. These persistently show the fight for "Liberty and bread" and the desire for a real peace.

For an activity of many years in the Party, the party program was authoritative for defendant Sauckel; the wishes contained therein required neither war nor the extermination of the Jews. The practical realization of the program alone could disclose the reality. For the convinced party member, however, the official explanation of the event was authoritative and it met with no doubts. Up to his nomination as the Plenipotentiary General for Labor Committment in March 1942, defendant Sauckel did not belong to the narrow circle of those who had access to Hitler's plans. He had to rely upon the press and the broadcasts like everybody else. He had no contact with the leading men. This is shown somewhat tragically by his action, so often laughed at, in boarding a submarine as an ordinary seaman for a raid into enemy waters. That is not the way to participate in conspiracies.

H0183-0093

As a faithful follower of Hitler, defendant Sauckel remains alone in the circle of those in the know. It is understandable if the extreme men avoided him owing to his well known opinions. Also he was not initiated into the secret of people who at the same time wished to be both Hitler's friends and murderers, and he was not advised by the group of people who were Hitler's enemies, but who kept their truisms secret with a novel kind of courage. Faithful to the end, defendant Sauckel cannot to this day understand what has happened. Must he, like aheretic, recant his error in order to find grace? He lacks the contact with reality which would make understanding possible.

Does the sentence depend on his having unknowingly served a good or a bad cause? Nothing is either good or bad, but thinking makes it so. One thing however, is always and under circumstances good, and that is good intentions. This good intention was shown by the Defendant Sauckel. Therefore, I ask that he be acquitted.

THE PRESIDENT: I call on Dr. Exner for Defendant Jodl.

H0183-0094

DR. EXNER (Counsel for defendant Jodl): Mr. President, may it please the Tribunal, in this unique trial the discovery of the truth is faced with unique difficulties. At a time when the wounds of the war are still bleeding, when the excitement of the events of the last few years is still felt, at a time when the archives of one side are still shut, a just verdict is to be given with dispassionate neutrality. Material for the trial has been spread out before us which covers a quarter of a century of world history and events from the four corners of the globe.

On the basis of this tremendous material, we see 22 men being accused simultaneously. That makes it terribly difficult to keep one's eye clear for the guilt and the responsibility of each individual, for inhumanities of an almost unimaginable vastness have come to light here, and the danger exists that the deep shadow which falls on some of the defendants may also darken the others. Some of them appear, I fear, in a different light because of the company in which they are here than they would if they were alone on the defendants' bench.

The Prosecutors have increased this danger still more by repeatedly making joint accusations, mixing legal and moral reproaches. They said that all of the defendants had enriched themselves from the occupied territories, that there was not one who did not shout, "Die, Judah," and so forth. No attempt to prove this in the case of each individual was made, but the statement alone creates an inimical atmosphere to all of them.

One of the things that come under these actions by the Prosecution which make the clearing up of the question of individual guilt more difficult is the fact that the defendants Keitel and Jodl are treated as inseparable twins. One common plea against them by the British Prosecutor, one common trial brief by the French Prosecution, and finally the Russian Prosecution spoke very little about the individual defendants but, rather, heaped reproach after reproach upon all of the defendants.

All of this is clearly intended to shorten the trial, but it hardly served to clear up the question of individual responsibility. Indeed, the Indictment goes still further. It stretches beyond these 22 defendants and

H0183-0095

affects the fate of millions -- this through the prosecution of the organizations, which, taken in conjunction with Law Number 10, has as its result that one can be punished for the guilt of other persons.

And finally, a thing that is more important at th e moment is a further form of summary treatment of the defendants. The Prosecution is bringing in the conception of a conspiracy to reach the result again that persons can be made individually responsible for something wrong that others did. I must go into this point in greater detail, as it concerns my client as well.

It is actually clear, I think, from the previous speakers' statements that a conspiracy to commit crimes against the peace, the laws of war and of humanity didnot in fact exist. Therefore, I shall show only one thing: If such a conspiracy did actually exist, Jodl, at least, did not belong to it.

The Prosecution has admitted that Jodl's participation in the conspiracy before 1933 could not be proved. In fact, anyone whose attitude toward the whole National Socialist movement was so mistrustful and who spoke with such skepticism about its seizure of power did not conspire to help Hitler into the saddle. But the Prosecution seems to think that Jodl joined the alleged conspiracy in the period before 1939.

In fact, during this time, too, nothing essential changed for him. Actually, his attitude toward Hitler was now a lawfully loyal one, for it was Jodl's respected Field Marshal von Hindenberg who had called Hitler into the government, and the German people had confirmed this decision with more than 90 per cent of its votes.

Added to this was the fact that in Jodl's eyes -- and not alone in Jodl's eyes -- Hitler's authority was bound to rise powerfully in view of his marvelous successes at home and abroad, successes which now followed one after another in quick succession, but personally Jodl remained without any connection with Hitler. He did not participate in any of the big meetings at which Hitler developed his program. Hitler's book, Mein Kampf -- the Bible of National Socialism -- Jodl had read only parts of. Jodl remained just an unpolitical man, quite in accordance with his personal inclinations which lay far from party politics and in accordance with the traditions of the old

H0183-0096

family of officers from which he sprang. Inwardly of liberal leanings, he had little sympathy for National Socialism; outwardly he was forbidden to belong to the Party, and he was without all rights to vote and all political activity.

If, as the Prosecution says, the Party held the conspiracy together and was the instrument of cohesion between the defendants, then one asks in vain what cohesion actually existed between Jodl, and, let us say, Sauckel, or between Jodl and Streicher. Of all the defendants, except the officers, the only one he knew before the war was Frick, from one or two official conferences in the Ministry of the Interior. He kept out of the NSDAP, and his attitude towards its organizations was even, in some sense, inimical. His greatest worry during these years, as later right to the end, was the danger of Party influence in the armed forces.

Jodl did what lay in his power to prevent the SS from being puffed up into a subsidiary Wehrmacht, to prevent the handing over of the Customs Frontier Guards to Himmler, and he notes triumphantly in his diary that after the withdrawal of Colonel General von Fritsch, Hitler did not, as was feared, make General von Reichenhau, who had Party ties, commander in chief of the army but the unpolitical General [illegible]chitsch, and so forth.

If Jodl had conspired for National Socialism in any way, he would have behaved in the opposite manner on each of these points.

Jodl was also not present at any of the so-called meetings of the conspirators -- not on 5 November 1937 -- Hitler's testament remained unknown to him -- nor at Obersalzburg in February 1938, nor at the meetings on 23 May 1939, nor of 22 August 1939.

No wonder. Jodl was after all at that time still much too small a man to be brought into occasions which were of such decisive importance to the state. People do not conspire with lieutenant colonels or colonels on the General Staff. They are simply told what to do, and that settles the matter as far as they are concerned:

However, the most incontrovertible proof of the fact that Jodl can

H0183-0097

have belonged to no conspiracy to wage aggressive war is his absence of ten months' duration just before the beginning of the war. Jodl had left the OKW in October 1938 and was sent to Vienna as artillery commander. At that time there was in his mind so little probability of war that, before leaving Berlin, he drafted on his own initiative a deployment in all directions. In this he moved the mass of the German forces to the center of the Reich because he could not see in any direction definite opponents against whom a deployment plan would have to be prepared. German transcript, page 10,856.

Exactly a year before the beginning of the attack, this alleged conspirator for aggressive wars drew up a purely defensive General Staff job, and, although he knew definitely that in case of war he would have to return to Berlin, this possibility seemed so distant that he transferred to Vienna, together with all of his furniture.

H0183-0098

Still further, as he wished to get away from office work again at last, he had the Mountain Division at Reichenhall promised him for 1 October 1939. Lastly, as late as July he procured shipping tickets for a sea trip planned to last several weeks and which would have begun in September.

So sure was he of a peaceful further development during these ten months up to the time he was called to Berlin shortly before the outbreak of the war, Jodl had no official or private connections with the OKW. The only letter he got from them at that time was the one which promised him his transfer to Reichenhall on 1 October.

Note that at that most critical time--at the very time when the alleged conspirators were discussing and working out the Polish plan, Jodl was out of all contact for ten months with the authoritative persons and knew no more of what was happening than one of his second lieutenants.

When the Fuehrer came to Vienna during the summer, it did not even seem worthwhile to Keitel to introduce Jodl to him, although Jodl was called upon in the event of war to carry out the alleged common aggresive plan as strategic commander to the supreme commander.

One can imagine how astonished Jodl was to read in the Indictment that he had been a member of the conspiracy to launch the war.

Mr. President. I have reached the end of a paragraph, and this perhaps might be an opportune more to recess.

THE PRESIDENT: Very well.

(The Tribunal adjourned until 19 July 1946 at 1000 hours.)